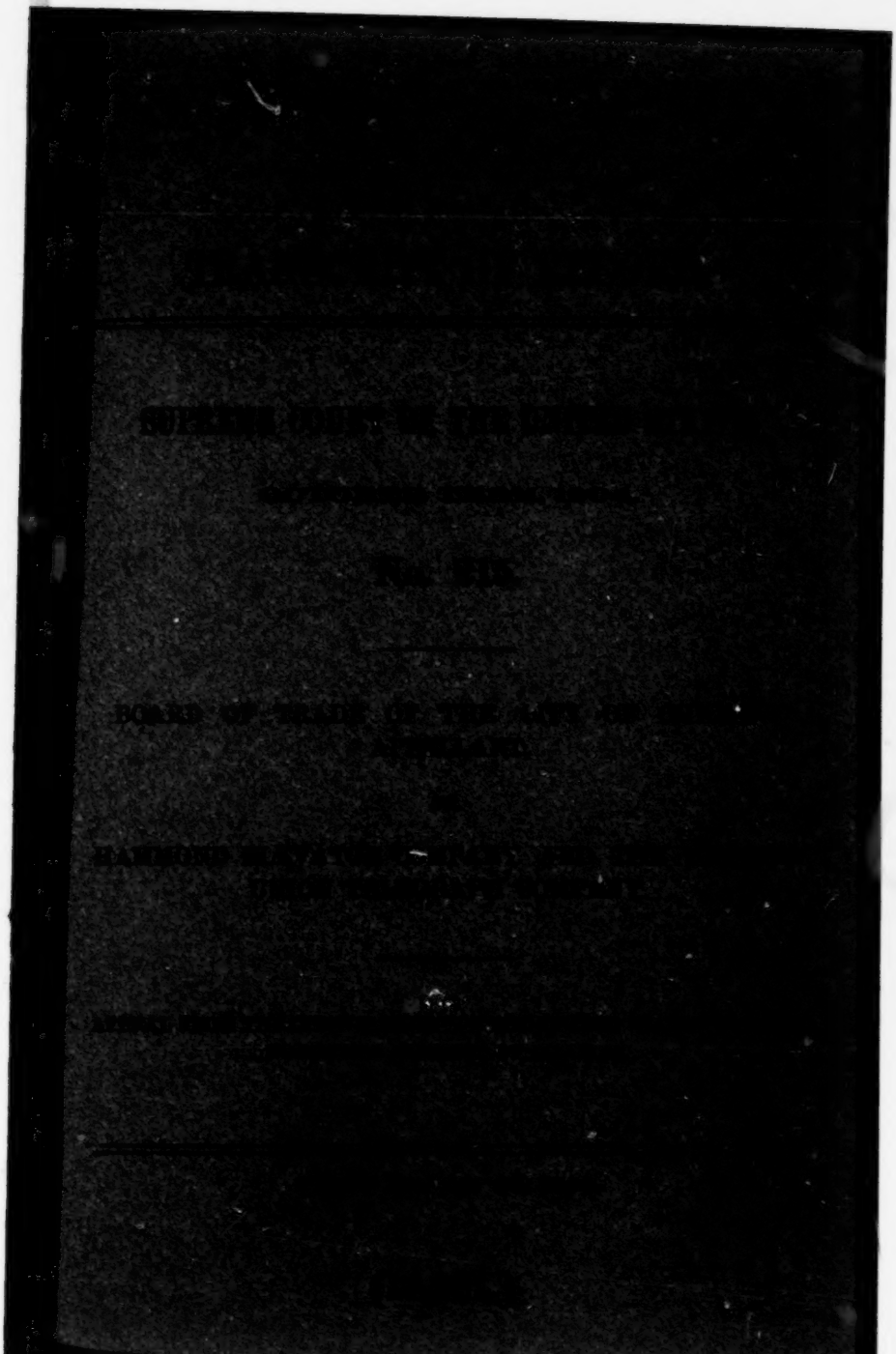

(19,281.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 215.

BOARD OF TRADE OF THE CITY OF CHICAGO, APPELLANT,

vs.

HAMMOND ELEVATOR COMPANY AND THE WESTERN UNION TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Circuit Court of the United States, Northern District of Illinois, Northern Division.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR and WESTERN UNION Telegraph Company. } In Chancery. 26837.

Mr. Henry S. Robbins, solicitor for complainant.
Mr. Jacob J. Kern, Mr. John A. Brown, Mr. Lloyd Charles Whitman, solicitors for defendants.

2–4 Pleas in the circuit court of the United States for the northern district of Illinois, northern division, in chancery sitting at the United States court room, in the city of Chicago, in said district and division, before the Hon. Christian C. Kohlsaat, district judge of the United States for the northern district of Illinois, on Tuesday, the twenty-third day of February, in the year of our Lord one thousand nine hundred and four, being one of the days of the regular December term of said court, 1903, and of our Independence the one hundred and twenty-eighth year.

MARSHALL E. SAMPSELL, *Clerk.*

5 NORTHERN DISTRICT OF ILLINOIS, *Northern Division.*

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY. } In Chancery. 26837.

Be it remembered that on this day to-wit: the eighth day of July, 1903, came the complainant in the above entitled cause by its solicitor, Mr. Henry S. Robbins and filed in the clerk's office of said court a certain bill for injunction in words and figures following to-wit:

6 *Bill for Injunction.*

In the Circuit Court of the United States for the Northern District of Illinois.

To the honorable judges of the circuit court of the United States for the northern district of Illinois:

Board of Trade of the City of Chicago, brings this, its bill, against the Hammond Elevator Company, and thereupon your orator complains and says:

I. That your orator is a private corporation, organized under a special charter granted to it by the State of Illinois on the 18th day of February, 1859, and is a citizen of the State of Illinois, and a resident of said district, and having its principal place of business therein; and that said Hammond Elevator Company is a corporation organized under the laws of the State of Delaware, and a citizen of the State of Delaware.

II. That the objects of your orator's incorporation are "to maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and disseminate valuable commercial and economic information, and generally, to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits;" and that it is given by its charter power to sue and be sued,
7 receive and hold property of all kinds, and dispose of the same by sale or otherwise, and to make such rules, regulations and by-laws as it may think proper or necessary for the government of said incorporation and its affairs; also the power to admit such persons to be members, and expel such members, as it may see fit, in manner to be prescribed by its rules, regulations and by-laws, and generally to do and carry on any business that is usually conducted by boards of trade or chambers of commerce, but that as your orator is informed by counsel, it is not, by its charter, given the power to conduct a telegraph business, nor does said charter impose on your orator the duty of furnishing to the public or any person whatsoever, the knowledge of quotations of the prices made in transactions between its members within its exchange hall.

III. That your orator has at present about 1800 members; that it has provided in the city of Chicago an exchange building which cost upwards of $1,250,000, and that the yearly cost to your orator of maintaining such building and conducting such exchange is more than $240,000, more than $100,000 of which is raised by yearly assessments upon its members, and that each membership in said exchange is now worth, for the purpose of sale or transfer, the sum of $4000.00, and any person of good character and business integrity can become a member of your orator upon application to your orator and paying its regular initiation fee, or by acquiring in lieu thereof from a member, a transfer of an existing membership, which is readily purchaseable. And your orator has provided within said exchange building, for the exclusive use of its own members only, an exchange hall, where many of its members meet
8 every business day between the hours of 9:30 a. m. and 1:15 p. m., (except Saturday, when the market hours are from 9:30 a. m. until noon) to buy and sell for themselves, or as brokers for their customers, for present and future delivery, all kinds of grain and hog products, said transactions aggregating many million bushels of grain, and many million pounds of hog products annually, and having become so large that said exchange has become one of

the great grain and provision markets in the United States. That such purchases and sales are permitted by your orator to be made, and are made, only during said market hours, and by open *viva voce* bidding, and the knowledge of the prices thus made in said transactions during said market hours upon said exchange has become a species of property of such large value to your orator, that telegraph companies are willing to pay your orator large sums of money for the privilege of receiving instantaneously said quotations and selling the same to their customers; and many persons throughout the United States who are engaged in the grain and provision business are willing to, and actually pay, and for many years have paid, said telegraph companies large sums of money therefor; and that your orator realizes from the sale of said quotations to certain telegraph companies, as hereinafter more fully set forth, large sums of money annually, but that said quotations are of such a peculiar kind of property that their value depends upon your orator's power to confine the transmission and distribution of said quotations to such telegraph companies and other distributing agencies as will contract therefor with your orator: and the value of said quotations to your orator will be much impaired, if not wholly lost, if telegraph companies or others are allowed to receive or take the same without right or surreptitiously, or by theft, and when so acquired, to use the same or distribute them to the public for use—the value to your orator of said quotations depending upon your orator's preventing the said quotations from being generally or surreptitiously published in a way to make them free to the public: for if any telegraph company or other person is permitted to promptly acquire said quotations surreptitiously or by theft, and without paying your orator therefor, the telegraph companies contracting with your orator for said quotations, and agreeing to pay your orator therefor, will be put at such a disadvantage in competition with such telegraph companies or persons acquiring the same surreptitiously and without paying your orator therefor, as to prevent said contracting telegraph companies from long continuing to purchase said quotations from your orator.

IV. That the manner of collecting and distributing said quotations is as follows:

Experienced persons under the control of your orator are placed in each of the different parts of the exchange hall of your orator where the buying and selling of the different commodities are taking place, these parts being commonly known as "pits," whose duty it is to at once mark on paper, every fluctuation in the market price of the commodity dealt in in such pit, and to immediately transmit said written prices by messengers to a telegraph operator on said exchange floor, who at once transmits them by means of an electrical instrument known as the "Morse" instrument, over telegraph wires running to the offices in Chicago of the Western Union Telegraph Company and Postal Telegraph-Cable Company, Cleveland Telegraph Company and Chicago & Milwaukee Telegraph Company, whence they are automatically repeated over wires running

to many of the large cities and places in the United States, which wires in said cities and places are connected with, and attached to, the Morse repeating instruments located in the offices of persons, firms and corporations and sundry exchanges, who or which desire to use said quotations and contract with, and purchase the same from, one or the other of said telegraph companies, and in Chicago and some of the larger cities of the country, said quotations are redistributed among other persons desiring to purchase the same by means of what is known as the "ticker" system, which consists of a ticker transmitter located in the office of the telegraph company operating said system and connected with sundry telegraph wires running from said transmitter to the various offices and places of business of persons in said cities who desire to use, and are willing to contract with, and pay, such telegraph company for such quotations, each of such wires being connected in each of said offices with an electrical instrument known as a "ticker," by means of which the quotations which are thus electrically transmitted by means of said transmitter over said wires to said ticker, are automatically and immediately printed upon an automatically unrolling roll of paper called "tape," so that persons in the offices of said customers of said telegraph companies can read the same on said tape, and by means of one or the other of the methods here indicated, the continuous quotations of prices made upon the exchange of your orator can be, and are, conveyed to persons all over the United States and in many of the cities and towns thereof, within
11 from 15 to 20 seconds after said prices are made in said transactions on the exchange of your orator, and that the yearly expense to your orator of collecting said quotations as aforesaid, is more than $7000.00.

V. That about the 1st day of June, 1892, your orator, desiring to give for a time at least the public the benefit of its said quotations, by written license permitted the Western Union Telegraph Company and the Postal Telegraph-Cable Company (both engaged in doing a general telegraph business throughout the United States) to gather such quotations through their own employés upon said exchange floor, and to sell and distribute the same to their customers, without paying your orator therefor; but your orator is informed and believes that said telegraph companies soon proceeded to sell or distribute said quotations to all persons desiring them without discriminating between those who desired them for legitimate purposes and those desiring them for illegal purposes, and that by reason thereof, many persons purchased said quotations from said telegraph companies for the purpose of using the same in conducting the business of gambling or betting upon the fluctuations of prices on the exchange floor of your orator, of commodities dealt in on such exchange—such business consisting of making so-called contracts or trades with customers—wherein neither party thereto contemplates or intends the delivery of the commodities mentioned in said contract, but both parties thereto contemplate and in-

tend that said so-called contracts or trades shall be adjusted with reference to the public market quotations of the prices made on the exchange of your orator, and wherein said parties contemplate that said so-called contracts or trades shall terminate and be closed out when
the said market quotations of the prices on such exchange shall
12 reach a certain figure, or shall exhaust a certain deposited
margin—usually a small one—said places of business being popularly known as bucket shops, and being in reality conducted for the purpose of betting or gambling on the price of commodities dealt in on said exchange, as disclosed by said continuous market quotations of your orator, and that those of such bucket shops whose transactions have reference—as most of them do—to the commodities dealt in on the exchange of your orator, cannot exist or conduct business without receiving the continuous market quotations of prices on the exchange of your orator, and other similar exchanges, and that, as your orator avers, the conducting of so-called bucket shops is contrary to the laws of the State of Illinois, and your orator avers that by reason of the failure and unwillingness of said two telegraph companies to discriminate, as they ought to have done, between legitimate traders and so-called bucket shops, in the sale and distribution of said quotations of your orator, this bucket shop evil had assumed such large proportions and had become so serious as to materially affect legitimate business speculation and other transactions on the exchange of your orator, and to bring into discredit your orator and its members in the minds of many people, who ignorantly supposed from said use of your orator's said quotations as a basis of said bets that said bucket shops were in some way connected with your orator, and thereby many of said customers were ignorantly led to believe that they were dealing with members of your orator, and that their contracts were to be, and were in fact, executed upon your orator's exchange, and with its members, and
13 when losses were incurred by such persons in such bucket
shops, either from the adverse fluctuations of said market prices, or from the dishonesty of the persons conducting said bucket shops, such customers erroneously believed that they had suffered through the dishonesty of members of your orator, and that in some way your orator and its members were responsible therefor, whereby the good name and reputation for business integrity of your orator and its members became and were impaired and said members were deprived of many customers and large sums of money in emoluments and commissions which would otherwise come to them but for the discredit cast upon your orator and its members through the existence and operation of said bucket shops as aforesaid, and the erroneous impression created as aforesaid in the public mind as to their connection with your orator, and that by reason thereof your orator became and was embarrassed and hindered in fulfilling and carrying out the objects for which it was organized, and by reason of the premises aforesaid, your orator found it necessary to, and did, on June 1st, 1900, by due notice, terminate said

written license to said two telegraph companies, and soon thereafter your orator found it necessary to, and did, adopt certain reasonable regulations calculated to prevent the sale and distribution by telegraph companies of said quotations to persons conducting so-called bucket shops and other illegal business, and to produce by the sale of its said quotations sufficient funds with which to take steps, legal and otherwise, to suppress such of said bucket shops as run upon, and use in their business, your orator's quotations, and to attain this end, your orator formulated said regulations in the form
14 of a written contract to be signed by each telegraph company receiving and distributing said quotations, in and by which said contract, such telegraph company was required to agree not to knowingly give or sell such quotations to any so-called bucket shop, or to any other telegraph company, also to pay your orator therefor.

That the Western Union Telegraph Company and the Postal Telegraph Cable Company refused to sign such contract, and being informed in writing by your orator that unless they did sign such contract before August 1st, 1900, they would not thereafter be given or be allowed to take such quotations, they in turn notified their customers that they would discontinue furnishing such quotations after August 1st, as aforesaid, by reason whereof, neither of said two telegraph companies were, after August 1st, 1900, and before April 1st, 1901, entitled of right to, or did, receive or distribute said market quotations of your orator.

VI. That the Cleveland Telegraph Company, a corporation organized under the laws of the State of West Virginia, to do a general telegraph business, and the business of purchasing and selling market, and other, news, and the Chicago & Milwaukee Telegraph Company, a corporation organized under the laws of Wisconsin to do a like business, did, on or about the 31st day of July, 1900, each execute with your orator a contract, in which the telegraph company therein mentioned was authorized to receive said market quotations for a certain consideration to be paid by it to your orator, and in which said telegraph company agreed that it would not knowingly furnish or sell, directly or indirectly, said quotations to any person, firm or corporation conducting a bucket shop or other similar place,
15 nor would it knowingly continue to furnish said quotations to any person, firm or corporation who should retransmit or furnish the same to any other person, firm or corporation conducting a bucket shop or other similar place; and that it would not knowingly directly or indirectly furnish said quotations to any other telegraph company, person, firm or corporation engaged in the business of distributing market news by telegraph or telephone, and that said telegraph company also agreed that it would furnish said continuous quotations only to such of its customers as would sign a written agreement that said quotations were to be used only for the private use of said customer in his or its business, and that he or it would not sell, communicate or otherwise give said quota-

tions to any news distributing or telegraph company, or allow any person, firm or corporation whatever, to directly or indirectly take said quotations from said customer's office, and also reserving to said telegraph company the right to terminate said contract if such customer should violate the foregoing provisions. And your orator avers that the only business of said Cleveland Telegraph Company is the distribution of said market quotations in the city of Chicago, and the said Chicago & Milwaukee Telegraph Company's business is confined to the telegraph business between the city of Chicago and the city of Milwaukee, in the State of Wisconsin: and that said Chicago & Milwaukee Telegraph Company sells said quotations only to such persons desiring the same in the city of Milwaukee. That on the 28th day of February, 1902, a certain extension agreement was entered into between said Cleveland Telegraph Company and your orator, and a similar agreement between said Chi-
16 cago & Milwaukee Telegraph Company and your orator, in and by each of which it was provided that the agreement between said company and your orator, herein referred to, should be extended and continue in force for one year from said 28th day of February, 1902, and thereafter until such telegraph company, or said board of trade, should give the other party sixty (60) days' written notice of its intention to terminate the same; and that said telegraph company therein also agreed that it would exact from its customers a contract or application in the same form as that provided in the contract between said Board of Trade of the City of Chicago and the Western Union Telegraph Company and Postal Telegraph-Cable Company, dated April 15th, 1901, hereinafter set forth, and that in all other respects said original agreements between said parties should remain in full force and effect.

VII. That on, to-wit; the 1st day of April, 1901, your orator, and said Western Union Telegraph Company and said Postal Telegraph Cable Company entered into and executed the following agreement:

17 This agreement, made this 15th day of April, 1901, between the Board of Trade of the City of Chicago, a corporation organized under the laws of the State of Illinois, party of the first part, and the Western Union Telegraph Company, a corporation organized under the laws of the State of New York, party of the second part, and the Postal Telegraph Cable Company, a corporation organized under the laws of the State of New York, party of the third part, witnesseth:

First. The said board of trade agrees to furnish, without discrimination or delay, to the said party of the second part and said party of the third part, complete and continuous quotations of prices made in transactions between members of said board of trade in its exchange hall. Such quotations shall be received by each of said telegraph companies at its office or offices in the city of Chicago, over a wire or wires to be furnished by the said telegraph company, con-

necting its office or offices with Morse telegraph wire or wires in the exchange building of the said party of the first part, which shall run to and be connected with the Morse telegraph transmitting instrument upon the floor of said exchange; such transmitting instrument to be the only instrument by which such quotations are to be transmitted from the said exchange hall. Said market quotations shall be collected in the different parts of said exchange hall and be brought to the Morse telegraph operator at said transmitting instrument with as much speed, efficiency and completeness as they were prior to June 22, 1900, collected by the said parties of the second and third parts, and shall be transmitted by said operator with the same diligence, promptness and completeness as the same were prior to June 22, 1900, transmitted by the said parties of the second and third parts; the operator, Morse telegraph transmitting instrument and wires leading to the various telegraph companies, parties hereto, to be located at the wheat pit, and within reach of the wheat reporter, said operator to be satisfactory to the telegraph companies. The said party of the first part agrees to employ or cause to be employed, without expense to the party of the second or of the third part, a sufficient number of competent persons for the purpose of collecting and transmitting the said quotations of sales upon said exchange hall, including the necessary force of messengers for carrying said quotations and reports to the transmitting operator, so that the parties of the second and third part- shall obtain complete and continuous quotations throughout all sessions of said board
18 of trade of the prices at which commodities dealt in on said exchange are bought and sold. The party of the first part agrees that the intention of this clause is to insure that the delivery of its quotations to the parties of the second and third parts hereto shall be simultaneous with and in the same manner as their delivery to any other telegraph company or party to whom they may be furnished for distribution. And said board of trade further agrees that said telegraph companies may designate some person of good character and proper behavior to take from the blackboard in said exchange hall, as the same is posted there, all market and statistical information which is posted on said blackboard, and that such person shall have a permit to enter said exchange hall for that purpose.

Second. The said parties of the second and third parts agree that they will not knowingly furnish or sell, directly or indirectly, said continuous quotations to any person, firm or corporation conducting a bucket-shop, or other similar place, where such quotations are used as a basis for bets or other illegal contracts based upon the fluctuations of the prices of commodities dealt in on said board of trade; nor will they knowingly continue to furnish said continuous quotations to any person, firm or corporation who shall retransmit or furnish the same to any person, firm or corporation conducting such bucket-shop or other place; provided, however, that nothing in this contract shall be construed as imposing upon the said parties of the

second and third parts the duty to investigate and determine the character of business conducted by any person, firm or corporation applying for or receiving such continuous quotations, but the procedure to be adopted for the purpose of determining whether any applicant for such continuous quotations, or any person, firm or corporation receiving said quotations, contemplates using them, or is using them, for any of the prohibited purposes aforesaid, shall be as follows:

1. Every applicant for such continuous quotations shall sign in duplicate an application in writing as follows:

"To the ..... Telegraph Company:

We hereby apply to you for the continuous market quotations of the Chicago Board of Trade, and we represent and agree with you, and with the Board of Trade of the City of Chicago, from which you, under contract, have acquired the right to distribute said quotations—

I. That our business is and shall be the business of .... and that we are not keeping or causing to be kept, and will not keep or cause to be kept any bucket-shop, or any office, store, or other place
19 wherein is conducted or permitted the business of making, or offering to make, contracts, agreements, trades or transactions respecting the purchase or sale or purchase and sale of any grain, provisions or other commodity or property, wherein both parties thereto or the undersigned contemplate or intend that such contracts, agreements, trades or transactions shall be, or may be, closed, adjusted, or settled according or with reference to the public market quotations of prices made on any board of trade or exchange upon which the commodities or securities referred to in said contracts, agreements, trades or transactions are dealt in, and without a *bona fide* transaction on such board of trade or exchange, or wherein both parties or the undersigned shall contemplate or intend that such contracts, agreements, trades or transactions shall be or may be deemed closed or terminated when the public market quotations of prices made on such board of trade or exchange for the articles or securities named in said contracts, agreements, trades or transactions shall reach a certain figure; and we agree that we will not use or allow any one else to use such quotations or any of them for any such purpose or in such bucket-shop.

II. We further agree with you, and with the said Board of Trade of the City of Chicago, that said quotations are to be received by us only for our private and individual use, and that said quotations will be used only in our said business; and that we will not sell or communicate or otherwise give said continuous quotations to any news distributing company, or telegraph company, or other person or corporation, nor allow any person or corporation whatsoever to take, directly or indirectly, said continuous quotations from said office, or to make a wire connection with the instruments or wires

in said office over which we receive said quotations. But nothing herein shall preclude us from transmitting said quotations to any branch office of ours, nor to any of our correspondents, provided that before transmitting said continuous quotations to any such correspondent we first obtain in duplicate (one of which shall be at once delivered to said board of trade) an agreement signed by such correspondent, in which said correspondent shall agree with you, and with said board of trade, to abide by and comply with clauses I, II and III hereof. If the undersigned shall transmit, or permit to be transmitted, said quotations to any person, firm or corporation, who shall not have first signed a correspondent's agreement as above provided, the undersigned hereby agrees that said board of trade may sue the person, firm or corporation to whom said quotations are thus transmitted, to prevent the receipt or use of said quotations by said person, firm or corporation without making the undersigned a defendant thereto; provided the undersigned does not, or in case of a partnership, all the members thereof do not, reside within the jurisdiction of the court in which said suit is brought. By "continuous quotations" in this clause II is meant quotations wherein the price of any commodity shall be quoted oftener than at intervals of ten minutes.

III. We further agree that a strict compliance with the above provisions is and shall be a condition precedent to our right to a continuance of said quotations; and agree if we shall violate either of the above provisions, then you shall have the right at once and without notice, to cut off and cease furnishing said quotations.

We further agree with you that you shall not be pecuniarily liable for the accuracy of the quotations which you may furnish under this application, nor for errors, delays or omissions in the service.

This application shall become a contract binding upon us when accepted by you."

One of such applications so signed shall be by the telegraph company mentioned therein at once transmitted to the party of the first part at Chicago, which shall thereupon instigate such investigation as it deems proper to determine whether such applicant desires said quotations for said prohibited purposes. Such investigation shall in the case of applications made and delivered to the party of the first part, within thirty days after the date hereof, be completed within sixty days after the date hereof; and when so received after said thirty days, said investigation shall be completed within ten days after such receipt of said application. If said party of the first part shall not within the time above specified notify said telegraph company at its office in Chicago that, for the reasons aforesaid, said application should not be granted, then said application shall be accepted and said telegraph company may thereupon furnish said applicant said quotations; but if within said time said party of the first part shall find upon investigation, and shall notify said telegraph company, that said applicant wishes said quotations for any of said prohibited purposes, said telegraph company shall refuse to furnish

said quotations upon said application. If legal proceedings shall thereupon or thereafter be commenced against said telegraph company on account of any delay in receiving said quotations or such refusal to furnish quotations, said proceedings shall be defended by the party of the first part, which shall, and hereby agrees to, pay all counsel and attorney's fees, costs, charges, damages, fines, penalties and expenses which said telegraph company may be put to or may be made subject to on account of such delay or refusal; and
21 for the purpose of securing the said telegraph company against any such loss, expenses or damages occasioned by such delay or refusal or such legal proceedings, the said telegraph companies shall at all times retain from the compensation hereafter provided the amount of such compensation for the period of six months; and to this end, the first payment provided for under this contract shall not be made until seven months after it shall go into effect, and if at any time either of the said telegraph companies shall be obliged to pay any costs, damages or expenses which shall not be refunded to it by said party of the first part on demand, then the said telegraph companies may pay from the said fund so retained the amount so paid by said telegraph company, and may then retain from the subsequently accruing installments a sum sufficient to make good the amount so paid out from said fund for costs, damages or expenses.

2. If said board of trade shall at any time ascertain that any person, firm or corporation receiving said continuous quotations from the party of the second or third part, or from persons to whom either party of the second or third part furnishes said quotations, is using said quotations for the purpose of conducting the business of illegal gambling in any of the commodities dealt in on said board of trade, or is conducting a bucket-shop as defined by the law of Illinois, or is violating any of the agreements contained in said application or correspondent's agreement, then said board of trade may (1) so inform said telegraph company so furnishing said quotations and tender to said telegraph company its bond, with a surety company in good financial standing as surety thereon running to said telegraph company, and in such penal sum as shall be fixed by said telegraph company, conditioned to save said telegraph company harmless from all costs and damages (including attorney's fees) that may be incurred by said telegraph company by acting upon said information and thereon withholding said quotations from such person, firm or corporation. And thereupon said telegraph company shall at once cease to furnish said quotations to such person, firm or corporation, or if a correspondent, then to the person, firm or corporation whose correspondent he is; and in that event said board of trade shall, at its own expense, defend any suits brought against said telegraph company, by reason of its said conduct. Or if said board of trade shall elect not to give such bond of indemnity then it (2) may at its own expense commence legal proceedings in a court of competent jurisdiction against such person, firm or corporation

and said telegraph company to enforce this contract and determine whether such person, firm or corporation is using said quota-
22 tions for such illegal purposes, or is using such quotations in conducting a bucket-shop or contrary to the terms of his, its or their agreement aforesaid; and in such suit said telegraph company shall enter its general appearance as defendant, and if in said suit or in any suit brought by any such person, firm or corporation against either or both of the teel-graph companies, parties hereto, it shall be determined by injunctional order or final judgment or decree conclusive upon the parties to said suit, against the right of such person, firm or corporation to have or use said quotations, then said quotation service to such person, firm or corporation shall be discontinued by said party of the second or third part furnishing the same, and said board of trade shall indemnify and save said party of the second or third part harmless against any loss, damage or expenses which may result to it by reason of said discontinuance of said service.

Third. It is further agreed by the said board of trade that it will cause to be kept quotation records showing the fluctuations throughout the day with the specific time of said fluctuations in the same manner as said quotation records have been heretofore kept and that said parties of the second and third parts may at all times have access to said quotation records.

Fourth. The said parties of the second and third parts hereby agree to pay said board of trade for said quotations and other market news the sum of twenty-five hundred dollars per month, payable on or before the second day of each succeeding month during which they shall receive said quotations, provided that the first payment shall not be required to be made until seven months after the going into effect of this contract, in accordance with the provisions of clause two of this contract. The proportions of said amount which shall be contributed by each telegraph company to be agreed upon between themselves. Thirty days after the termination of this contract the amount of money withheld by the telegraph companies as a security fund aforesaid shall be paid by them to the party of the first part. Provided, that if there are then pending any suits or claims against either of said telegraph companies on account of its refusal to furnish or continue furnishing said quotations, then the parties of the second and third parts shall have the right to retain a sufficient amount of said fund to amply secure them against said suits and claims, and on the final adjudication or settlement of said suits and claims the amount withheld as security therefor shall be paid by the second and third parties to the party of the first part. But if said party of the first part shall give to the parties of the second and third parts a good and sufficient bond ample to protect them against said pending suits and claims, including
23 all costs, damages and expenses, signed by some surety company in good standing and satisfactory to the parties of the second and third parts, then said telegraph companies shall pay the balance of said fund to the first party.

Fifth. The said party of the first part shall designate to parties of the second and third parts some officer of said board of trade to whom said telegraph companies, or either of them, shall apply for the correction of any faulty or inefficient service in the gathering, reporting or transmission of said quotations; or for any necessary change in said service and to whom said telegraph companies, or either of them may refer in case of any dispute which may arise as to the correctness of said quotations, and to whom said telegraph companies, or either of them, may apply touching any incidental question arising on account of said quotation service.

Sixth. Said party of the first part agrees to use all reasonable efforts to protect its property right in said quotations against purloiners thereof, and said telegraph companies agree that they will join either with said party of the first part or other telegraph company having the right to distribute said quotations, or both, as plaintiffs in any suit now pending or hereafter commenced, to protect said property right in said quotations from purloiners, provided that said telegraph companies shall be saved harmless by said party of the first part from any expense, costs, attorney's fees and damages incurred in or by reason of any such suit.

Seventh. Each of said parties of the second and third parts agrees that it will, whenever requested by said party of the first part, furnish to it a list of the persons who have discontinued said continuous quotations, to the end that said party of the first part may at all times know the names, locations and street addresses of all persons, firms or corporations then receiving said continuous quotations.

Eighth. It is further agreed that said telegraph companies may furnish said quotations to any other telegraph company with which either of them now have or may hereafter have any operating contract or other arrangement, provided that every such telegraph company shall first sign a contract or agreement, running to said party of the first part, to abide by and conform to clauses two, six, seven and ten of this agreement.

Ninth. And the said party of the first part hereby agrees that it has not entered into and will not enter into any contract or arrangement with any other person or company who has or may acquire the right to distribute said quotations, in which contract or arrangement the said party of the first part has agreed or shall agree to pass upon applications of persons applying for the quotation
24 service in a shorter period than those above provided for in the second clause of this contract. And it is further agreed that in passing upon applications for said quotation service presented by either of the second or third parties it will act without discrimination as between said second or third parties, or as between either of them, and any other person or corporation sending in applications for its patrons. And whenever the said party of the first part shall have before it at the same time applications from the same person, firm or corporation presented through two or more persons, telegraph, telephone or ticker companies, if it approves any of said

applications, it shall approve them all at the same time and shall notify at the same time all of said persons or companies through whom said applications were presented of such approval. This shall apply either when an application is approved affirmatively or by the failure of the said party of the first part to act upon any application.

Whenever either party of the second or third parts shall obtain and deliver to the party of the first part an application for the quotation service from any person, firm or corporation, who at the time of making said application is receiving said quotations with the approval of said first party, then the party of the second or third part may furnish said quotations on said application without waiting for an approval by the party of the first part as hereinbefore provided in other cases.

Tenth. The words "continuous quotations" wherever used in the second and seventh sections hereof shall be construed to mean every service of quotations wherein the price of any commodity shall be quoted oftener than at intervals of ten minutes. Each of said telegraph companies agrees not to furnish said continuous quotations to any person, firm or corporation, except as provided in sections two and eight hereof, the only intent and purpose hereof being to prevent the misuse of said quotations for said unlawful purposes, or in said unlawful business, and not to discriminate between persons desiring them for other than said prohibited purposes.

Eleventh. This agreement shall be in force for one year from the date hereof and thereafter until the first party shall give to said second party and third party, or said second party and third party shall give to said first party, sixty days' written notice of its or their intention to terminate the same.

In witness whereof, the parties hereto have hereunto affixed their signatures and corporate seals, the day and year first above written.

BOARD OF TRADE OF THE CITY OF CHICAGO,
[SEAL] By WILLIAM S. WARREN, *President.*

Attest:
GEO. F. STONE, *Secretary.*

THE WESTERN UNION TELEGRAPH COMPANY,
[SEAL.] By THOS. F. CLARK, *Vice-President.*

Attest:
A. R. BREWER, *Secretary.*

POSTAL TELEGRAPH-CABLE COMPANY,
[SEAL.] By W. H. BAKER,
Vice-President and Gen'l M'g'r.

Attest:
CHAS. P. BRUCH,
Ass't Secretary.

26 Which said agreement is still in full force and effect, and said Western Union Telegraph Company and said Postal Telegraph-Cable Company have been, since the date thereof, and now are, receiving from said board of trade and selling to their customers said quotations: and that no company, other than said four telegraph companies above named, has sought or acquired from your orator the right to sell or distribute said quotations, except certain subsidiary companies of said Western Union Telegraph Company and said Postal Telegraph Cable Company, including the Gold & Stock Telegraph Company, which have signed agreements with your orator as provided in clause VIII. of said contract between your orator and said Western Union and Postal Telegraph-Cable Companies, but that the only one of said subsidiary companies selling or distributing said quotations within the State of Illinois, is said Gold & Stock Telegraph Company, which acts only as the agent of said Western Union Telegraph Company in so doing, but that your orator is willing to make like contracts with any telegraph company desiring to have and distribute said quotations.

VIII. That your orator is informed and believes, and therefore charges the fact to be, that no person, firm or corporation is receiving said market quotations from any of said telegraph companies without having first executed and delivered one of the agreements in writing required in and by said contracts aforesaid, and that every person receiving said quotations from said Western Union Telegraph Company or Postal Telegraph Cable Company, or any of said subsidiary companies, has executed and delivered, as in

27 said contract provided, an application, signed by such customer, in the form set out in said contract, between said two telegraph companies and your orator; and that each person, firm or corporation receiving said quotations from said Chicago & Milwaukee Telegraph Company, and said Cleveland Telegraph Company, has signed an application and contract, either in the form set out in said contract between said Western Union Telegraph Company and Postal Telegraph Cable Company, and your orator, or in the form hereto attached and marked Exhibit "A:" and that said defendant, Hammond Elevator Company, has not delivered to any of said telegraph companies a contract therefor, in either of the forms above set out, nor has said defendant acquired the right to receive said quotations under or by virtue of any contract with any of said telegraph companies, nor under any correspondent's contract, as provided in said contract with said telegraph companies, by reason whereof, said defendant is not entitled to receive (nor is receiving) said quotations from any of said telegraph companies, or entitled to receive said quotations from any person to whom any of said telegraph companies is furnishing said quotations nor is said defendant entitled to receive or use said market quotations of your orator.

IX. That your orator well hoped that the said defendant would recognize and respect your orator's right of property in said quota-

tions, as it ought to do, and would neither directly nor indirectly, by connivance or otherwise, seek to impair or destroy your orator's said property in, or the value to it of, said quotations, by wrongfully and stealthfully acquiring the same, but your orator is informed and believes, and therefore charges the fact to be, that said defendant has entered into a conspiracy with other persons to your
28 orator unknown, but who, when discovered, your orator asks may be joined as defendants hereto, to steal such quotations either as the same are transmitted over the wires of said telegraph companies, or from the offices of customers of said telegraph companies when said quotations are received by them; and that said defendant is receiving, within and without said district, without right, and surreptitiously, and by theft, or from persons who are so receiving the same, the continuous quotations of your orator, and is using and exposing the same to public view in the same manner as though it had acquired the right to do so by lawful purchase or contract with one of said telegraph companies so contracting with your orator as aforesaid.

X. That, as already stated, such authorized use of said quotations by said defendant, without its being obliged to pay your orator anything therefor, is calculated to, and in time will, if not entirely stopped or prevented, destroy the value of your orator's said quotations, and no telegraph company will be able to pay your orator its price therefor, and successfully meet in competition others who acquire said quotations surreptitiously and without paying your orator's prices therefor. And that if even one person within the jurisdiction of this court be allowed to secure such quotations without the restrictions as to the use thereof which your orator imposes as aforesaid, such persons can furnish them to all the bucket shops and other persons within the United States desiring them, and thus entirely defeat the efforts of your orator to prevent their use in bucket shops as a basis of their illegal bets, and destroy your orator's right to realize money from the sale of said quo-
29 tations.

XI. That your orator is advised by its counsel that there exists no remedy at law adequate to protect your orator's right of property in said quotations against said efforts of said defendant to destroy the same, as actions at law for damages against each person getting the said quotations would be impracticable because giving rise to a multiplicity of suits and because the ascertainment of the exact or approximate amount of money damage in each such action would be difficult if not impossible; and that hence, the only adequate jurisdiction for the protection of your orator's property in such quotations is that of a court of chancery, and the only adequate remedy, a writ of injunction issuing therefrom, permanently restraining the said defendant from using or distributing said quotations or receiving the same from any person or telegraph company not authorized to give or use the same. And your orator further avers that the amount involved and matters in dispute in this suit,

exclusive of interest and costs, is much more than the sum of $2000.00.

All of which acts and doings of said defendant are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises. In tender consideration of which and forasmuch as your orator is remediless in the premises, at and by the strict rules of common law, and is relievable only in a court of equity where matters of this nature are properly cognizable and relievable. To the end, therefore, that the said Hammond Elevator Company, and its confederates when discovered, may true, direct and complete
30 answer make to this bill, but not under oath (answer under oath being hereby waived); and that this cause be referred to a master with directions to take evidence concerning the locations of all wires used by said defendant in the receipt of said quotations and any other evidence which is pertinent to ascertain what other persons are aiding or assisting said defendant in the receipt of said quotations, or are receiving said quotations in conjunction with said defendant, or otherwise, or are furnishing said quotations to said defendant; and that said persons when discovered, may be made parties defendant hereto, and that a temporary injunction may immediately issue, and upon the final hearing hereof be made perpetual, restraining said defendant, either when acting in its own behalf, or as the agent of any other person, firm or corporation, and also each and every of the officers, directors, agents, employees, and servants, of said defendant, from receiving, obtaining, using, selling, or distributing, directly or indirectly, said quotations of your orator, and from having, maintaining, or permitting, any telegraph wire running into or through its offices, over which said quotations are passing, and from aiding, abetting or assisting any other person, firm or corporation in receiving, selling or distributing said quotations, until the said defendant, or other person or persons so receiving said quotations, shall have first acquired the right to receive and buy said quotations, either from your orator, or some telegraph company which your orator shall have authorized to distribute said quotations: and that your orator may have such other and further relief in the premises as will fully protect your orator's right in said quotations, and as to your honors shall seem meet.

31 May it please your honors to grant unto your orator a preliminary and permanent injunction against the said defendant as above prayed, and also a writ of subpœna of the United States, directed to the Hammond Elevator Company commanding it on a day certain to appear and answer this bill, and to abide by and perform such decree as may be entered by this court.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HENRY S. ROBBINS, *Its Solicitor.*

HENRY S. ROBBINS, *Of Counsel.*

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32 UNITED STATES OF AMERICA,
Northern District of Illinois, Cook County, } ss:

George F. Stone being first duly sworn, deposes and says that he is the secretary of The Board of Trade, of the City of Chicago, complainant in the foregoing bill of complaint; that he has read the foregoing bill of complaint, and that the allegations of the said bill are true of his own knowledge, except as to those things therein stated to be upon information and belief, and as to those allegations, he believes said bill to be true.

GEORGE F. STONE.

Subscribed and sworn to before me this 8th day of July, A. D. 1903.

[SEAL.]

JNO. GILLIES,
Notary Public.

33 EXHIBIT "A."

Copy.

This agreement between the Cleveland Telegraph Company of the first part, and —— —— of the second part, witnesseth:

I. That the said telegraph company agrees to lease to said party of the second part at — office, —— St. in the city of Chicago — ticket instruments, and to keep the same in good running order and repair, and connected with the circuit of wires over which the market quotations of the Chicago board of trade are transmitted by said telegraph company, and to furnish to said party of the second part at said office the continuous market quotations of the Chicago board of trade.

II. That said party of the second part agrees that — business is, and shall be, the business of a — that said party of the second part is not conducting and will not conduct, a bucket shop or other business contrary to the criminal laws of the State of Illinois, or use or allow any one else to use said quotations for that purpose.

III. That said party of the second part agrees that — will pay said telegraph company for the use of said tickers and said quotations, the sum of — dollars per week, payable in advance; and that said quotations are only for the private use of said party of the second part and will be used only in said business, and that the party of the second part will not sell, or communicate, or
34 otherwise give said quotations to any news distributing company or telegraph company, nor allow any person or corporation whatsoever to take directly or indirectly said quotations from said office, or to make a wire connection with said instrument or wires in said office.

It is further agreed that a strict compliance with clause three is

and shall be a condition precedent to the right of said party of the second part to a continuance of the market quotations herein provided; and it is expressly agreed that, if said party of the second part shall violate said provision said telegraph company may at once and without notice terminate this contract and immediately remove from said office said ticker, wires and appliances.

Except as aforesaid, it is agreed that neither party hereto shall terminate this contract without giving the other party hereto thirty (30) days' written notice of an intention so to do.

No representations or conditions not herein inserted shall bind either party.

This contract not valid unless approved by the Cleveland Telegraph Company.

CLEVELAND TELEGRAPH COMPANY,
By —— ——,
—— ——, *T.*

Dated at Chicago, this — day of ——, 190–.
Approved —— —, 190–.

(Endorsed:) Filed July 8, 1903, Marshall E. Sampsell, clerk.

35 And on the same day to-wit: the 8th day of July, 1903, a certain chancery subpœna issued out of the clerk's office of said court directed to the marshal of said district to execute, which said subpœna together with the marshal's return thereon endorsed is in the words and figures following, to-wit:

36 Form No. 186.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

The United States of America to Hammond Elevator Company, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America, for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of August next, to answer the bill of complaint of Board of Trade of the City of Chicago, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this eighth day [SEAL.] of July in the year of our Lord one thousand nine hundred and three, and of our Independence the 128th year.

MARSHALL E. SAMPSELL, *Clerk.*

Memorandum.

The above named defendant is notified that unless it shall enter its appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against it as confessed, and a decree entered accordingly.

MARSHALL E. SAMPSELL, *Clerk.*

37 Circuit Court of the United States of America, Northern District of Illinois.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR CO. } In Chancery.

To Hammond Elevator Company:

Take notice that the complainant will move this honorable court, on the 13 day of July A. D. 1903 or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within and above named defendant in accordance with the prayer of the bill therein.

Yours, etc.,

HENRY S. ROBBINS,
Compl't's Solicitor.

Dated this 8 day of July A. D. 1903.

Marshal's Return.

I have served this writ within my district in the following manner to-wit: upon the Hammond Elevator Company, therein named by personally delivering a true copy of the same to Albert N. Babb, agent for the Hammond Elevator Company, at Peoria, Illinois, this 9th day of July A. D. 1903. The president of said company not found within my district.

JOHN C. AMES,
U. S. Marshal,
By S. O. TRIPP, *Deputy.*

I further served this writ within my district in the following manner to-wit: upon the within named Hammond Elevator Company by reading the same to and within the presence and hearing of John L. Dickes, a member of the firm of Battle & Dicks, agents of the said company, at the same time delivering a true copy thereof to him on the 8th day of July A. D. 1903, also by reading the same to and within the presence and hearing of C. S. Battle, a member

of the firm of Battle & Dickes, agents of the said company as aforesaid, at the same time delivering a true copy thereof to him, on the 9th day of July A. D. 1903.

I was unable to find the president of the said company within my district.

JOHN C. AMES,
U. S. Marshal,
By GEO. M. WHERRITT, *Deputy.*

(Endorsed:) Filed July 14, 1903. Marshall E. Sampsell, clerk.

38 And on to-wit: the 10th day of July, 1903, there was filed in the clerk's office of said court in said entitled cause a certain bond for costs in words and figures following to-wit:

39 UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss.:

In the Circuit Court of the United States, —— Term, A. D. 190–.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY. } In Equity.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the complainant of any costs ordered or adjudged to be paid by it hereby agree and stipulate that execution may issue againts my property for all costs not exceeding two hundred dollars taxed against Board of Trade of the City of Chicago.

Dated this 9 day of July A. D. 1903.

R. G. CHANDLER,
Residence, Highland Park, Ill.

Acknowledged before me this — day of —— 190–.

—— ——, *Clerk.*

(Endorsed:) Filed July 10, 1903. Marshall E. Sampsell, clerk.

40 And on to-wit: the third day of August, 1893, came the Hammond Elevator Company by its solicitors Kern and Brown and Lloyd Charles Whitman and filed in the clerk's office of said court in said entitled cause its certain special appearance and motion in words and figures following to-wit:

Special Appearance and Motion.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

United States Circuit Court for said District and Division. (In Chancery.)

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
THE HAMMOND ELEVATOR COMPANY. } Gen. No. 26837.

The Hammond Elevator Company, named defendant in the above entitled cause, appears specially by Kern & Brown and Lloyd Chas. Whitman, its solicitors, for the purpose hereinafter set forth and for no other purpose, and moves the court to set aside the return of the marshal of said court upon the subpœna, issued in said cause directed to said defendant, for the reason that said return is untrue in fact and insufficient in law, and hereby prays the judgment of this court whether it should be compelled to appear herein or plead to the bill of complaint herein, for the reason that said defendant has not been served with process herein, and is not compellable to appear or plead to said bill, and has not accepted and does not accept service herein nor waive due service of process upon it, said defendant, and that said defendant is not and was not at the date of the filing of said bill or at the date of the issuance of said subpœna, nor at any date subsequent thereto within said dis-
41 trict or within the State of Illinois, and was not found at the date of the filing of said bill, nor at any time subsequent thereto, within said district or within the State of Illinois, and that said defendant is not a resident of said State or said district but is a corporation organized and existing under and by virtue of the laws of the State of Delaware and a resident of said last mentioned State, with its principal place of business without said State of Illinois and said district.

KERN AND BROWN AND
LLOYD CHAS. WHITMAN,
Solicitors for the Hammond Elevator Company.

(Endorsed:) Filed Aug. 3, 1903. Marshall E. Sampsell, clerk.

42 And on the same day to-wit: the third day of August, 1903, there was filed in the clerk's office of said court in said entitled cause the certain affidavit of Frank C. Williams in words and figures following to-wit:

Affidavit of Frank C. Williams.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

United States Circuit Court for said District and Division. (In Chancery.)

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
THE HAMMOND ELEVATOR COMPANY. } Gen. No. 26837.

Affidavit of Frank C. Williams.

Frank C. Williams, being first duly sworn on oath deposes and says, that he is and was on the 8th day of July, 1903, and has been continuously since said last mentioned date the secretary of the Hammond Elevator Company; that said last mentioned company is a corporation organized and existing under and by virtue of the laws of the State of Delaware; that its home office is Wilmington, Delaware; that said last mentioned corporation is qualified to and is doing business at Hammond, Indiana, under and by virtue of the statutes of Indiana, authorizing foreign corporations to do business in said last mentioned State.

Affidant further says that said Hammond Elevator Company is not and was not on the 8th day of July, 1903, nor at any time
43 since said last mentioned date, in the State of Illinois, or said district, and that the president or any other officer or agent of said Hammond Elevator Company is not and was not on said 8th day of July, nor at any time subsequent thereto, in said State of Illinois or said district, transacting business for or representing said Hammond Elevator Company or attending to or engaged in the business of said Hammond Elevator Company in said State of Illinois or said district, that said Hammond Elevator Company is not and was not on said July 8th, or at any time subsequent to said last mentioned date authorized or qualified to do business within the State of Illinois in accordance with the statutes of Illinois.

FRANK C. WILLIAMS.

Subscribed and sworn to before me this 30th day of July, A. D. 1903.

[SEAL.] PETER CRUMPACKER,
Notary Public.

My commission expires Sept. 11, 1905.

44 STATE OF INDIANA, } ss:
County of Lake, }

I, Harold H. Wheeler, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that Peter Crumpacker, Esquire is a notary public, within and for said county, duly commissioned and qualified; that his commission was dated on the 11th day of September, 1901, and will expire on the 11th day of September, 1905, and that his signature within is genuine.

Given under my hand and the seal of said court at Crown Point, Indiana, this 30th day of July, 1903.

[SEAL.] HAROLD H. WHEELER, *Clerk.*

(Endorsed:) Filed Aug. 3, 1903. Marshall E. Sampsell, clerk.

45 And on the same day to-wit: the third day of August, 1903, there was filed in the clerk's office of said court in said entitled cause the certain affidavit of William H. Gostlin in words and figures following to-wit:

Affidavit of William H. Gostlin.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

United States Circuit Court for said District and Division. (In Chancery.)

BOARD OF TRADE OF THE CITY OF CHICAGO }
vs. } No. 26837.
THE HAMMOND ELEVATOR COMPANY. }

Affidavit of William H. Gostlin.

William H. Gostlin, being first duly sworn on oath deposes and says that he is and was on the eighth day of July, 1903, and has been continuously since said last mentioned date, the president of the Hammond Elevator Company; that said last mentioned company is a corporation organized and existing under and by virtue of the laws of the State of Delaware; that its home office is Wilmington, Delaware; that said last mentioned corporation is qualified to do and is doing business at Hammond, Indiana, under and by virtue of the statutes of Indiana, authorizing foreign corporations to do business in said last mentioned State.

46 Affiant further says that said Hammond Elevator Company is not and was not on the eighth day of July, 1903, nor at any time since said last mentioned date, in the State of Illinois or said district, and that the president or any other officer or agent of

said Hammond Elevator Company is not and was not on said eighth day of July, nor at any time subsequent thereto in said State of Illinois or said district transacting business for or representing said Hammond Elevator Company, or attending to or engaged in the business of said Hammond Elevator Company in said State of Illinois, or said district; that said Hammond Elevator Company is not and was not on said July eighth or at any time subsequent to said last mentioned date authorized or qualified to do business within the State of Illinois in accordance with the statutes of Illinois.

WILLIAM H. GOSTLIN.

Subscribed and sworn to before me, this 30" day of July, A. D. 1903.

My commission expires Sept. 11, 1905.

PETER CRUMPACKER,
Notary Public.

[SEAL.]

47 STATE OF INDIANA, } ss:
County of Lake, }

I, Harold H. Wheeler, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that Peter Crumpacker, Esquire, is a notary public, within and for said county, duly commissioned and qualified; that his commission was dated on the 11th day of September, 1901, and will expire on the 11th day of September, 1905, and that his signature within is genuine.

Given under my hand and the seal of this court at Crown Point, Indiana, this 30th day of July, 1903.

[SEAL.] HAROLD H. WHEELER, *Clerk.*

(Endorsed:) Filed Aug. 3, 1903. Marshall E. Sampsell, clerk.

48 And on to-wit: the third day of August, being one of the days of the regular July term of said court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry, to-wit:

Order of August 3, 1903.

BOARD OF TRADE
vs. } 26837.
HAMMOND ELEVATOR COMPANY.

Comes now the Hammond Elevator Company, by Kern and Brown, and Lloyd Charles Whitman, its solicitors, and enters herein its special appearance in writing and its motion in writing to set

aside the return of the marshal of said court upon the subpœna issued in said cause, directed to said defendant, and its motion in writing to dissolve the temporary injunction herein pending the above mentioned motions to quash service of subpœna; and thereupon the said motions are entered and continued by agreement of the parties, without date, to be called up upon notice by either of the parties hereto.

49 And on to-wit: the fifth day of October, being one of the days of the regular July term of said court. 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry, to-wit:

Order of October 5, 1903.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY. } 26837.

Now come the parties by their solicitors and this cause coming on to be heard upon the motion heretofore filed by the defendant to quash the service of process herein.

It is ordered that said motion be and the same is hereby referred to William M. Booth, Esq., one of the masters in this court, to take the evidence of the parties thereon and report the same with his conclusions of law with all reasonable despatch.

And the defendant objects and excepts to the selection of said Booth as such master.

50 And on to-wit: the 15th day of December, 1903, there was filed in the clerk's office of said court in said entitled cause certain evidence taken before William M. Booth, master in chancery, in words and figures following to-wit:

Evidence Taken Before William M. Booth, Master in Chancery.

In the United States Circuit Court, Northern District of Illinois, Northern Division. In Chancery.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY. } Bill. No. 26837.

Master's certificate of evidence.

I hereby certify that the transcript and documents hereto attached constitute all the documentary evidence, and a full, true and com-

plete transcript and report of all the oral evidence and proceedings had and taken before me in the above entitled cause, under the order of reference entered therein on October 5th, 1903.

WILLIAM M. BOOTH,
Master in Chancery of said Court.

51 In the United States Circuit Court, Northern District of Illinois, Northern Division. In Chancery.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY.

Testimony taken in the above-entitled cause before William M. Booth, Esq., master in chancery for said court, on Wednesday, October 21, 1903, at two o'clock p. m., and on subsequent days as hereinafter appearing, pursuant to an order of reference heretofore entered in said cause.

Appearances.

Henry S. Robbins, Esq., representing the complainant.
Messrs. Kern & Brown and Lloyd C. Whitman, Esq., representing the defendant.

HENRY S. ROBBINS, called as a witness in behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. WHITMAN:

Q. What is your full name, Mr. Robbins?
A. Henry S. Robbins.
Q. You are solicitor for the complainants in this matter?
A. Yes.
Q. I show you the summons in this case and ask you whether that is your signature, H. S. Robbins, signed over 'Attorney for plaintiff?'
A. No.
Q. It is not?
A. No.
52 Q. Do you know who signed it?
A. The body of it seems to be Mr. Topp's writing. The signature I don't know about.
Q. You don't know whether it is Mr. Topp's or not? Who do you mean by Mr. Topp?
A. My head clerk at that time.

Q. What is the rest of his name, do you know?

A. Harry R. Topp.

Q. Do you know whether that signature, H. S. Robbins, is by Mr. Foss?

A. No, I don't know who wrote that.

Q. Do you know who commenced this suit for you?

A. Well, I directed it, but I don't know.

Q. Do you know whether it was Mr. Foss or Mr. Topp?

A. No.

Q. Was it one or the other of them?

A. It was one or the other of them.

Q. And you gave them their instructions for the commencement of suit?

A. Yes.

Q. At the time, then Mr. Topp, as you say wrote in here under the words "Clerk is requested to direct the marshal to serve the following named defendants at the addresses given below" wrote in, "The Hammond Elevator Company, Chicago, Illinois," he was in your employ and was acting under your instructions?

A. What is the date of it?

Q. It is the date you commenced suit.

A. Let me see. He left my employ the first of August.

Q. This is the 8th day of July.

A. He was in my employ up to the first day of August.

Q. Did you direct him to direct the marshal*l* to serve process in this case on the Hammond Elevator Company in Chicago, Illinois?

A. I don't remember.

Q. Did anyone direct him to do so?

A. That I don't know. I don't know who would direct him unless I did.

53 Q. You would be the only one?

A. Nobody directs—I gave the directions in my suits. I have no partner.

Q. So that if Mr. Topp endorsed here 'Hammond Elevator Company, Chicago, Illinois' that was under your direction?

A. I don't know. He seems to have endorsed it, but whether I instructed him to or not, I don't know.

Q. Did you give Mr. Topp any instructions as to his instructing the marshal as to where and how service of this process should be made?

A. My recollection is that I directed service to be made in the same way that it had been made in the case of Board of Trade of the City of Chicago against the Central Grain and Stock Exchange.

Q. And how had it been made in that case?

A. I don't know, except I know Battle & Dickes or one of them was served, and Babb was served and some officer of the defendant was served in Chicago.

Q. Those were your instructions to Mr. Babb?

A. I presume so. I don't remember anything about it.

Q. But you didn't direct him to have the Hammond Elevator Company served in Chicago, Illinois?

A. Oh, I wouldn't say. I don't remember about that.

Q. Did you give him any instructions as to whom process might be served upon in Chicago, Illinois?

A. If I gave any it was probably the instructions that I have indicated, for service, to follow the same line as in the Central case.

Q. In the Central case, you refer to the case of The Board of Trade of the City of Chicago *vs.* The Central Grain & Stock Exchange of Hammond in this circuit court?

A. Yes.

Q. Which was a case which was also instituted by you and in which you represented the Board of Trade of the City of Chicago?

A. Yes.

54 Q. Do you know whether or not Mr. Topp followed your instructions in the matter of directing the marshal as to how to serve this process?

A. I know nothing but what the record shows.

Q. I will ask you to look at the process, return on the process, and ask you whether, so far as shown on the writ of summons, or rather the writ of *subpœna ad respondendum*, Mr. Topp appears to have followed your instructions as you recall them?

A. I see no return on the writ except the service of Battle & Dickes and Babb.

Q. So far as that goes, it was a service in accordance with your directions to Mr. Topp?

A. I presume so.

GEORGE M. WHERRITT, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. WHITMAN:

Q. Mr. Wherritt, what was your business on the 9th day of July, 1903?

A. Deputy United States marshal for the northern district of Illinois.

Q. How long had you held that position?

A. Almost six years and a half.

Q. Continuously, prior to that date?

A. Yes, sir.

Q. When did you cease to be deputy marshal?

A. First day of October.

Q. Last?

A. Yes, sir.

Q. I show you the process in this case and call your attention to the signature of John C. Ames, United States marshal, by George M. Wherritt, deputy, and ask you whether that is your signature?

A. Yes, sir, I served that paper and the return was made at my direction on the typewriter.

Q. And you served the writ by reading it to and in the presence and hearing of John L. Dickes, a member of the firm of Battle & Dickes, agents of the said company, and delivering a true
55 copy thereof to him on the 8th day of July, A. D. 1902?

A. Yes.

Q. Also by reading the same to and in the presence and hearing of C. S. Battle?

A. Yes, the next day.

Q. From whom did you get this writ for service?

A. The gentleman that was just in here, Mr. Fraley, the chief deputy in the office.

Q. Do all processes come from him to you deputies?

A. Yes. The rules of the office there, the chief deputy receives the writs and receives the fees connected with it and turns it over to Mr. Fraley, and a memorandum from the plaintiff's attorneys who to serve and what to serve and when to serve, and then Mr. Fraley takes it and places it in the hands of the deputy he wishes to serve it.

Q. From whom did you get your directions, if any, as to how to serve those processes?

A. Mr. Fraley.

Q. Do you remember whether they were oral or in writing?

A. I think Mr. Patterson generally makes a memorandum on a slip of paper from the attorneys or their agents who to serve and to know where it is to be served, what the mileage is and what the fees in the case, and then he takes it after he receives the fees and turns it over to Mr. Fraley with a memorandum and then he picks out the deputy he wants to serve it.

Q. What were the instructions you received?

A. I was instructed to go to Aurora to get service to these two gentlemen in that case.

Q. Serve them how?

A. With that writ.

Q. As agents for——

A. Hammond Elevator Company.

Q. Now, Mr. Wherritt, prior to the time that you served this writ, had you ever received any, or prior to the time you returned this writ, did you ever receive any information from any source to
56 lead you to believe that Battle & Dickes were agents of the Hammond Elevator Company, except instructions for service of this writ which you have just referred to?

A. No, sir.

Q. Have you any reason to believe that Battle & Dickes are agents of the Hammond Elevator Company?

A. No, I have not.

Q. Did you ever, except as you stated at the time you served this writ?

A. No, I didn't have any information then to satisfy me they were the agent.

Q. Did you at the time you made the return on this writ?

A. No.

Q. All that you did was to serve the writ in accordance with what you understood?

A. According to the instructions of the office, I didn't know whether they were or not, but I was instructed to serve it in that way and had to comply with the orders.

Q. You were subpœnaed here to-day?

A. Yes, I was subpœnaed to appear here at two o'clock.

No cross-examination.

FRANK G. WILLIAMS, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. WHITMAN:

Q. Mr. Williams, what is your full name?

A. Frank G. Williams.

Q. Where do you live?

A. Hammond, Indiana.

Q. What is your business?

A. Secretary of the Hammond Elevator Company.

Q. Were you secretary of the Hammond Elevator Company on the 8th day of July last?

A. I think I was.

Q. And have been ever since that time?

A. Yes, sir.

Q. Are you anything other than secretary down there?

A. One of the directors.

Q. One of the board of directors?

A. Yes.

Q. Do you know whether or not the Hammond Elevator Company has qualified under the laws of Illinois to do business
57 in this State? Have you ever filed——

A. They have not.

Q. Never have qualified. Do you know whether or not on July 8, or at any time since that date, the Hammond Elevator Company has had any agents or employés regularly in the State of Illinois transacting business for them?

A. They have not.

Q. Do you know whether the president or any other officer or agent of the Hammond Elevator Company was in the State of Illinois or in the northern district of Illinois on the 8th day of July last?

Mr. ROBBINS: How does he know?

Mr. WHITMAN:

Q. On business of the company?
A. No, not on business of the company.

Mr. WHITMAN: I will excuse you and put Mr. Fraley on the stand if there is no objection.
Mr. ROBBINS: None at all.

D. A. FRALEY, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. WHITMAN:

Q. What is your full name?
A. D. A. Fraley.
Q. What is your business?
A. Deputy United States marshal for the northern district of Illinois.
Q. And also chief clerk of the office, are you not?
A. Yes, sir.
Q. And you were such in July last?
A. Yes, sir.
Q. Do you remember this process I show you, being process for *subpœna ad respondendum* in this case?
A. Yes, sir.
Q. I call your attention to the fact that a process is returned by Mr. Tripp and Mr. Wherritt, return served by them respectively on one Babb and on Battle & Dickes, and ask you whether
58 you gave this process to Wherritt and to Tripp, and if so whether you gave them any instructions as to the service of the process?
A. Well, I could not state positively whether I delivered the writ to Mr. Wherritt or not, *let* that is within the limits of my duty. I deliver all writs and have charge of all deputies in the direction of their work, and I think I did, although I am not positive about that. The directions—the writ was sent to Peoria, delivered to Mr. Tripp by mail, as all writs going to his division are. The instructions to Mr. Wherritt to serve Battle & Dickes at Aurora were that he make personal service upon them.
Q. As agents of the Hammond Company?
A. Yes, sir.
Q. Who sent those instructions to Tripp?
A. Well, I presume that there was a letter dictated accompanying the writ to Mr. Tripp, directing him in what manner to make the service. That is usual, and I presume that course was followed.
Q. From whom? From you?
A. It would be from Mr. Ames, the marshal, but perhaps it would be written by Mr. Patterson, dictated by Mr. Patterson, or perhaps the stenographer in the office dictated it.

Q. Who signed it?
A. It would be signed by Mr. Ames officially.
Q. Not Mr. Ames by one of the deputies but by Mr. Ames himself?
A. Yes, sir.
Q. Did you receive in connection with that writ from any source whatever any directions as to how the writ was to be served?

Mr. ROBBINS: That is objected to on the ground that he cannot vary a writ or its effect by parole evidence. I want to save the point.
The MASTER: You may answer.

A. No, I think not, except the general direction, accompanied with this direction sheet here.
59 Q. That is the direction sheet that says Hammond Elevator Company, Chicago, Illinois.
A. Yes, and then of course the attorney bringing it in will usually make a little memorandum on a slip of paper that we hand to the deputy directing him who to serve.
Q. That is just what I am inquiring about. I want to know whether you receive from any source any direction as to whom to serve with that process?
A. Yes, sir.
Q. From whom did you get that?
A. I could not say. My judgment would be it would have to come from the attorneys representing the complainants in this bill.
Q. Have you any information now, except as you derived it from this writ itself, as to whether Battle & Dickes or Babb, the parties named in this return, are agents of the Hammond Elevator Company?

Mr. ROBBINS: Same objection.

A. No.
Q. You have no means of knowledge on that subject?
A. No, sir.
Q. If you gave the instructions to Mr. Wherritt and Mr. Tripp as to the service of this process, you had no information—or did you have any information at the time you did so as to the relation of the individuals upon whom the process was actually served, to the Hammond Elevator Company, except as you derived it from some one who came in there and paid you your fees and instituted the suit?
A. None whatever, no, sir.

No cross examination.

FRANK G. WILLIAMS, resumed the stand, and his direct examination was continued by Mr. Whitman, as follows:

(Question read as follows:) "Do you know whether the president or any other officer or agent of the Hammond Elevator Company was in the State of Illinois or in the northern district of Illinois, on the 8th day of July last, on business of the Company?

60 A. No, not on business of the company.")

Q. Mr. Williams, do you know the firm of Battle & Dickes at Aurora, Illinois?

A. Yes, sir.

Q. Do you know the individual members of it, John L. Dickes and C. S. Battle?

A. I met both of them.

Q. Were either Mr. Battle or Mr. Dickes or both of them on the 8th day of July last, or have they ever represented, acted for or transacted business for the Hammond Elevator Company?

A. No, sir.

Q. Have either of them ever acted as agents of the Hammond Elevator Company?

A. No, sir.

Q. Do you know Albert H. Babb, of Peoria?

A. Yes, sir.

Q. Do you know whether or not on the 9th day of July last, or at any other time he has ever acted for or represented or transacted business for the Hammond Elevator Company?

A. He has not.

Q. Was he on the 9th day of July last, or has he ever been an agent of the Hammond Elevator Company?

A. No, sir, never has.

Q. Did the Hammond Company on July 8th last, or has it had at any time subsequent thereto, or has it ever had officers or agents in the State of Illinois on the business of the Hammond Elevator Company?

A. No, sir.

Q. What business if any has the Hammond Elevator Company ever transacted in the State of Illinois?

A. None whatever.

Q. Has it ever done any banking business here?

A. We have had accounts with banks.

Q. Have you any now?

A. No, sir.

Q. What relation does the Hammond Company sustain, or did it sustain on July 8th, or has it ever sustained, with Battle & Dickes, or either of them, or with Mr. Babb?

A. They just simply send business to us.

61 Q. What do you mean by send business?

A. Send orders on stocks, grain, provisions.

Q. You buy and sell for them?
A. Yes, sir.
Q. Where are the purchases or sales involved in the transactions between the Hammond Elevator Company and Battle & Dickes or Babb, made?
A. In Hammond, Indiana.
Q. Has the company any other office than at Hammond?
A. They have an office at Wilmington, Delaware.
Q. Has it any other office than those two?
A. No, sir.
Q. Has it ever had an office in the State of Illinois or in the northern district of Illinois?
A. No, sir.
Q. Or ever transacted business in Illinois or in the northern district of Illinois except as you have described in the way of doing banking here?
A. That is all.
Q. Has the Hammond Elevator Company ever had any other office than the office at Hammond and the office at Wilmington?
A. No, sir.

Cross-examination.

By Mr. ROBBINS:

Q. How long has the Hammond Elevator Company been organized?
A. From the latter part of last year.
Q. December, 1902?
A. About that time.
Q. How long have you been connected with it?
A. Since they started business.
Q. How long have you been secretary and director of it?
A. Since January, some time in January.
Q. What other relation do you have to the company?
A. Any other office? I have no other office. I work there in the office.
Q. Now what is your work there?
A. I do some of the trading for the company, fill orders.
62 Q. You fill orders?
A. Yes, sir.
Q. What else do you do?
A. That is all. As secretary I sign checks, letters and drafts.
Q. Are the checks signed by the secretary?
A. The secretary and one other.
Q. Who is the other?
A. Either the president or the assistant treasurer.
Q. You mean each check is signed by two persons?
A. By two, yes.
Q. So you sign all checks?

A. Two of the three. I might not sign all of them. Two of the three signatures on all checks.

Q. Did the Hammond Elevator Company succeed to the business of any other company?

Mr. WHITMAN: I object to that as calling for a conclusion of the witness, and not cross examination. It is not the issue here. The issue is whether the Hammond Elevator Company is doing business in Chicago?

Mr. ROBBINS: It is preliminary to develop the situation.

The MASTER: I think it does call for a conclusion, Mr. Robbins.

Q. What concern were you connected with prior to your connection with the Hammond Elevator Company?

A. The Central Stock & Grain Exchange.

Q. Where was the Central Grain & Stock Exchange located?

A. Hammond, Indiana.

Q. What was its business?

A. Dealers in grain, stocks and provisions.

Q. The same kind of business that the Hammond Elevator Company is engaged in?

A. To a certain extent.

Q. What did you do in connection with that company?

A. I was a sample clerk.

Q. A clerk in their office?

A. Yes.

Q. Where did they have an office in Hammond?

A. 92 State street.

63 Q. Where does the Hammond Elevator Company have an office?

A. On Oakland avenue in the Hammond building. The old concern had an office there for a short time.

Q. The Hammond Company succeeded to the office of the Central Grain & Stock Exchange, didn't it?

A. They occupied the same offices.

Q. They didn't occupy them together, did they?

A. No.

Q. The Hammond Elevator Company started in business at the same time that the Central Grain & Stock Exchange went out of business?

A. About that time.

Q. Were there any other employés of the Central Grain and Stock Exchange who became immediately employés of the Hammond Elevator Company after the Central Grain & Stock Exchange had ceased to transact business?

A. Yes, most of them were employés of the Hammond Elevator Company.

Q. Most of them? Were the books the same for both companies for a while?

Mr. WHITMAN: I object to that as not cross examination. There is a limit to these preliminary questions your honor.

The objection was sustained.

Q. Does the Hammond Elevator Company have any wires running to points other than Hammond, from Hammond to other points?

A. Yes, sir.

Q. How many?

A. Oh, I don't know how many.

Q. Well, about how many?

A. We have about a dozen wires that come to Chicago and they are connected with wires in the Western Union office here in Chicago that go out through the country.

Q. Are those wires that are devoted to the exclusive use of the Hammond Elevator Company during the business hours?

A. Yes, all of them.

64 Q. In other words these wires the Hammond Elevator Company leased from the Western Union Telegraph Company for its exclusive use between a certain hour in the morning, nine o'clock or so in the morning, until some hour in the afternoon, after the markets are closed?

Mr. WHITMAN: I object to the question as not cross examination and calling for a conclusion of the witness, and on the ground that it is incompetent until it appears whether the lease was written or oral.

The objection was overruled, to which ruling of the master the defendant by its counsel then and there duly excepted.

A. I don't know whether the wires are leased or not. They are assigned to us every day. We had wires at certain places every day.

Q. Who assigned them to you?

A. They are Western Union wires.

Q. So the Western Union assigned you certain wires every day?

A. Yes, sir.

Q. For use during market hours?

A. Yes, sir.

Q. And do you pay them for it, or do they give them to you?

A. I never knew them to give anything away.

Q. And your company pays for the use of these wires?

A. Yes, sir.

Q. Pays the Western Union Telegraph Company?

A. Yes, sir.

Q. Now to what points do these wires run?

A. You mean all our wires?

Q. Yes?

A. I don't know where all of them go. I know where some of them go.

Q. Give me some of the places?

A. Louisville, Kentucky, St. Louis, Missouri, Iowa City, Iowa; Green Bay, Wisconsin, Bay City, Michigan, Detroit, Michigan, and these wires have drops at intermediate stations.

Q. You have given me through termini of the wires?

A. I gave the end of the wires, yes.

65 Q. And between these termini and Hammond there are intermediate points that your wires connect with?

A. Yes, sir.

Q. About how many points all told do your wires connect with?

A. Between 30 and 40 I should say.

Q. How many points in Illinois do these wires connect with?

A. Ten or twelve.

Q. Can you name the places in Illinois?

A. Some of them.

Q. Give them?

A. Sycamore, Illinois, De Kalb, Illinois, Aurora, Illinois, Galesburg, Illinois, Monmouth, Illinois, Peoria, Springfield, Decatur, Wilmington. That is all I recall just now.

Q. Into what office do the wires run at Peoria and Aurora?

A. The office of A. H. Babb in Peoria and Battle & Dickes at Aurora Illinois.

Q. Now what are these wires used for?

A. Transmitting business.

Q. What do you send out from Hammond over these wires to these points?

A. We send out a line of gossip, market quotations any messages that come in the regular course of business.

Q. What quotations?

A. New York stock, Chicago Board of Trade.

Q. Besides this market news that you send out over these wires, what eminates from your Hammond office over these wires?

Mr. WHITMAN: I object to the question as not cross examination, immaterial and irrelevant. We are getting down to a point where we are trying the merits of this case on the cross examination of this witness.

The MASTER: Let the question be confined to the Illinois wires and he may answer.

A. To the wires that run through Illinois?

The MASTER: To the wires that run to these various points that you named in Illinois?

Mr. ROBBINS:

Q. Now the question is, what else than you have named eminates from the Hammond office and goes over these wires to points

66 in Illinois that your wires run to?

A. Nothing.

Q. Do you confirm orders, messages, do they go over those wires?

A. My first answer included the orders, didn't it?

Q. I didn't understand it did, If it did, then I didn't understand you.

A. Yes, we have orders, the confirmations over the wires, gossip and quotations.

Q. In connection with these wires you have operators of your own at Hammond to operate on them, do you?

A. Yes, sir.

Q. You say you fill orders?

A. Yes, sir.

Q. Do you fill orders coming over these wires?

A. Yes, sir.

Q. From points in Illinois?

A. Yes, sir, I have orders from different points in Illinois.

Q. The conditions which you have been describing now and your work covers the entire time since the organization of the Hammond Elevator Company?

A. Yes, sir.

Q. Can you give the wording of these orders that come over the wires from points in Illinois?

A. The wording of any order that comes?

Q. The wording of any order that comes.

A. If it is an order to buy a certain amount of specified stock or grain, sometimes at the market price, sometimes with a limited price on it. Some of them have numbers and the signature of the party sending them.

Q. The orders to open trade have numbers, do they not?

A. Not all, no.

Q. When do they not?

A. We have accounts that never number a trade.

Q. The orders that come from Battle & Dickes always have a number do they not?

A. Yes, sir.

Q. The orders that come from Mr. Babb always have a number do they not?

A. Yes, sir.

Q. I wish you would give a sample order, a sample telegram, such as would come from Battle & Dickes or Mr. Babb, con-
67 cerning the purchase of one thousand bushels of December wheat.

Mr. WHITMAN: I object to that as not cross examination, and on the ground that it does not appear this man receives the orders or that he is a telegraph operator.

Objection withdrawn.

A. No. 1. Buy 1000 bushels of December wheat to market, and signature of the party sending the order.

Q. In the case of Battle & Dickes whose name would be signed?

A. Battle, or an abbreviation; some thing of the kind.

Q. What would No. 1 indicate?
A. The number of the trade.
Q. Now what do you do to fill the trade?
A. What do I do to fill it?
Q. Yes?
A. Whatever price it is filled at would be marked upon the order.
Q. What do you do? Describe in detail just what you would do to fill that order?
A. If it was a market order I would fill it at whatever the market price was.
Q. Where do you get the market price?
A. I get it out of a book.
Q. Out of a book?
A. Yes.
Q. What kind of a book?
A. It is a large book, a record of the markets kept in it.
Q. How is the record of the market kept there?
A. A man puts the markets in there.
Q. Where does he get the markets from?

Mr. WHITMAN: That is objected to as not cross examination, immaterial and irrelevant. That can only be material if they claim we have agents in Illinois collecting the market quotations, and if so I do not think they can start so far back as that. They must show the connection.
(Question read.)

A. He gets them off the wire.
Q. A wire running into your office?
A. Yes, sir.
Q. And how soon after they come in over the wire does he write them in this book?

68 Objected to by counsel for defendant as immaterial and irrelevant.
The MASTER: I do not think it is competent. I do not think it is material in this inquiry.

Q. What do you do when you get the telegram? Do you look at this book?

Mr. WHITMAN: In the first place it is not cross examination and in the second place the question has been asked and answered It is immaterial and irrelevant.
The MASTER: He may answer it. I think he did in substance answer it.
(Question read.)

A. I do unless I know what the market is.
Q. For that purpose do you look at the book?
A. To find out what the market is.

Q. To get the price to make the trade at?
A. To find out the price of whatever the commodity is.
Q. And you take that price as the price at which the trade is made——
A. I may and I may not.
Q. —when you fill the trade do you?
A. If the trade is filled right away I probably fill it at that price.
Q. And then what do you do when you get the price?
A. After the trade is filled?
Q. You get the price from the book; you have the telegram, now what do you do next?
A. If I want to fill the trade at the market price I mark the price on the order.
Q. Mark the market price on the telegram, do you?
A. The price it is executed at.
Q. Then what do you do?
A. It goes back to the wire.
Q. Then what is next?
A. It is reported to the correspondent sending the order.
Q. Give me a sample of a message of that kind taking the same commodity you referred to?
69 A. The operators on the wires send those messages themselves.
Q. Do you know what they are?
A. I know what their instructions are.
Q. What are the instructions?
A. In case an order has been filled for the purchase, the instructions are to report it back, you bought from us 1000 bushels of December wheat, and the price is given.
Q. Does not the telegram go back just as it came, with the exception of the change of the word 'buy' to 'bought'?
A. I don't know. I know what our instructions to the operators are. Whether they send them that way or not I can't say, I presume they do.
Q. Did you ever see any of those dispatches?
A. Ever see any of those dispatches?
Q. Sent over the wire, confirming dispatches, did you ever see any of them?
A. No, they are taken at the other end of the wire.
Q. Well, now, what next do you do with that trade?
A. I have nothing further to do with it.
Q. What does your company do with it?
A. It goes to the book-keepers from there.
Q. What?
A. Goes to some of the book keepers.
Q. Entered upon the books?
A. I suppose it is.
Q. With the number?
A. I presume so. I don't know, I do not keep the books.

Q. Well, now, what is the next thing that happens at your end in reference to that trade?

A. That is all I have to do with it.

Q. Do you ever get another dispatch concerning the trade?

A. I may get them, probably would not know it was the same.

Q. Do you ever get an order to close that?

A. I presume I would sometimes.

Q. You always do?

A. Not always.

Q. You generally do, don't you?

A. Somebody may get them.

70 Q. Somebody gets an order?

A. Some disposition is made of it.

Q. I want you to give a sample of the telegram that would come over that wire to close that trade?

A. If the trade is closed by a sale against it the order would read, sell 1000 bushels of December wheat to close No. 1.

Q. To close No. 1. That would come to you?

A. Yes, sir.

Q. And you would fill it in the same way?

A. Yes, sir.

Q. And mark the price on the telegram?

A. Yes, sir.

Q. And give it back to the telegraph operator?

A. Yes, sir.

Q. To repeat back to Battle & Dickes?

A. The confirmation would go back to them.

Q. Or Babb?

A. Yes, sir.

Q. And what would be the next step in the trade?

A. I would have nothing further to do with it.

Q. You know as secretary of the company what the next step in the trade is?

A. They go to the book keepers. Settlement is made on it. They go to the book keepers and a settlement is made.

Q. Suppose there is a loss,—suppose there is a profit made upon the transaction, did you draw a check for it?

A. Not for that particular trade.

Q. Do you draw a check for it and other trades? Does it figure in other words, in the checks that you sign?

A. Does that trade figure?

Q. Yes?

A. It probably figures in the daily balance at the end of the day.

Q. What are the daily balances?

A. They show either a debit or a credit to these correspondents.

Q. They would cover all the trades of that day from Battle & Dickes' office, would they?

A. Yes, sir.

Q. That were closed?

A. Closed, and new trades.

71 Q. Closed and new trades?

A. Yes, cover all his business during that day.

Q. And that is made out at the end of every day?

A. There is a statement rendered to them at the end of each day.

Q. And mailed from your office to them?

A. Yes, mailed from Hammond, Indiana.

Q. And on those statements each trade preserves a number that it has on the telegram?

A. Yes, sir.

Q. And it is known all through your books by the number, is it not?

A. Yes, sir, it is carried all through our books on one number.

Q. By the number?

A. Yes, sir.

Q. Given it on the opening telegram?

A. Yes, sir.

Q. Who gives it the number in the opening telegram? Is it given in your office or given in the office of Battle & Dickes or Babb?

A. The party sending the order does that.

Q. Now these two sample orders and this trade, does it correctly represent all the business that is done?

A. No, not all of it.

Q. Does it represent the bulk of the business that is done?

A. The greater portion of it, yes.

Q. Some of the transactions apply to stocks instead of to grain; that is right, is it?

A. Well, I don't understand that—now do you mean that class of the trade, that represents the greatest bulk of our business?

Q. Grain? No, I don't mean that. I mean that the form of opening the trade and closing and the character of the telegram accurately represents the general course of the business, the way in which it is all done.

Mr. WHITMAN: I think that is leading. He has given all the details and made his statements, and he has also stated ex-

72 pressly that the sales were not necessarily closed. The counsel who asks such a question as that commits the witness to everything that the counsel can argue from the question. It is not a fair question.

(Question read.)

The objection was overruled.

A. A portion of it, yes.

Q. And the great bulk of it, does it not?

Mr. WHITMAN: I object to that. He has answered the question, your honor.

The MASTER: He may answer.

To which ruling of the master the defendant by its counsel then and there duly excepted.

A. Well, I don't know as the greater bulk of it.

Q. Well, what other class of business do you get from Battle & Dickes and Babb besides these transactions in stocks and in grain carried on in a manner that you have explained with respect to this one transaction?

A. If the delivery is made on any one of those trades there would never be an order sent to close it out.

Q. Then it covers all the transactions except those on which deliveries are made, does it?

A. Yes, sir.

Q. Now, what do you do when delivery is made?

A. The entry in the books is marked delivered. The commodity is sent to them.

Q. Explain the transaction. What do you do now?

A. What do I do?

Q. Yes, what do you do?

A. I have nothing to do with it, It is the book keeper's work.

Q. You have nothing to do with deliveries?

A. I do not have anything to do with the book keeping part of it.

73 Q. About how many orders do you get from Battle & Dickes in a day?

Mr. WHITMAN: I object to that as immaterial, irrelevant and not cross examination.

The MASTER: He may answer.

A. I don't know.

Q. Approximately?

A. I could not guess at it.

Q. How many do you fill in a day?

A. I probably don't look at the signatures on the orders half the time.

Q. You do get a good many every day, do you not?

A. We get some every day.

Q. And you get some every day from Babb?

A. Yes. Oh, I won't say every day. Nearly every day we have orders from him.

Q. Did you make the arrangement with Battle & Dickes?

A. No, sir.

Q. By which the business relations between them and the Hammond Elevator Company was established?

A. No, sir.

Q. Who did?

A. I don't know unless it was some of the directors may have done it.

Q. Battle & Dickes were doing business with the Central Grain &

Stock Exchange up to the time they went out of business were they not?

A. They did business with them, yes.

Q. In the same way that you have been doing since?

Mr. WHITMAN: That is objected to as immaterial, irrelevant and not cross examination.

The objection was sustained.

Q. Did you make the arrangement with Mr. Babb?

A. No, sir.

Q. How soon after the company started did Mr. Babb's orders come over the wires?

A. I don't know that.

Q. What?

A. I can't answer that. He may not have sent any orders for all I know for weeks.

74 Q. Don't you know that that wire was there from Babb's office on the morning that the Hammond Elevator Company took up the business?

A. No, I don't know that it was, no.

Q. Do you know that it was not?

A. No, sir.

Q. Don't you know that the Battle & Dickes wire was there when business opened the first day for the Hammond Elevator Company?

A. I do not.

Q. You say that the Hammond Elevator Company does banking in Illinois?

A. Not at present.

Q. How long since it has done banking in Illinois?

A. The accounts were all drawn out about the first of the month or shortly afterwards.

Q. What?

A. The first of this last month.

Q. The first of this month?

A. The accounts were all closed, it was about that time, I won't say it was the first.

Q. Prior to the first of this month did the Hammond Elevator Company have banking arrangements in Illinois?

A. We had bank accounts in different banks.

Q. Where?

A. Had some in Chicago. In different places.

Q. Where in Chicago?

A. The Illinois Trust and the Chicago National.

Q. How long had the Hammond Company bank accounts with those two banks?

A. I don't know. As far back as I had any connection with the company they did, they had their accounts there.

Q. Who makes the deposits in those banks?

A. In Illinois.
Q. Yes?
A. They are mailed here from our Hammond office.
Q. You drew the checks upon the accounts, do you?
A. On these accounts that we had in Illinois.
Q. Yes?
A. I have signed checks on those banks.
Q. What other banks has your company had business with in Illinois?
A. I don't know the names of the banks. We had deposits in banks in different places where we had correspondents.
75 Q. In every town in Illinois where you have a correspondent you have a bank account with a resident bank, have you?
A. I don't know that we have in every town.
Q. In most of the towns?
A. In some of them, yes.
Q. That is true in Aurora, is it not?
A. I think we have a bank account, or had one in Aurora.
Q. And that is true at Peoria, is it not?
A. I think we had one there.
Q. Do you draw checks upon the Aurora bank and sign them?
A. I can't say whether I ever signed one on the Aurora bank or not.
Q. Who does?
A. Who does.
Q. Yes.
A. You mean who makes the checks out?
Q. Signs the checks?
A. I sign some of the checks. I don't know as I ever signed one on that bank or not.
Q. You don't remember the particular banks?
A. No.
Q. How many banks do you have accounts with all told?
A. We have a great many. I don't know.
Q. A great many?
A. Yes.
Q. So many that you cannot remember the particular bank?
A. We have a lot in the East I don't know anything about.
Q. Have you signed checks upon the bank at Peoria?
A. I don't know whether I have or not.
Q. Who makes the deposits of money in these banks at the points where you have so-called correspondents?
A. The correspondents generally, so far as I know.
Q. In the case of Aurora, Battle & Dickes would make the deposit in that bank, would they?
A. I presume some of them would as far as I know.
Q. And at Peoria Babb would make all the deposits to be made?
A. Yes, sir.
Q. You keep these bank accounts at these Illinois points in order

that these so called correspondents may make deposits from
76 day to day to your credit, do you not?

Mr. WHITMAN: I object to that as not cross examination, immaterial, irrelevant, calling for conclusion and not a question of fact.
The objection was sustained.
Mr. ROBBINS: On what ground?
The MASTER: It calls for a mental action as to their object in doing so, what is done is proper, but not the purpose.

Q. What is the purpose of having a bank account at Aurora and at Peoria?

Mr. WHITMAN: Same objections.
The objection was sustained.

Q. What other money is deposited in the bank at either of those points than the money deposited by Battle & Dickes at Aurora and Babb at Peoria?
A. I don't know whether there is any or not.
Q. What?
A. I don't know whether any other deposits are made except those made by those people, or not.
Q. You don't know of any deposits in either of those banks except by the so called correspondent at that point?
A. I would not know it, no.
Q. When you draw checks upon these banks what is done with the checks?
A. I don't know.
Q. What?
A. I don't know.
Q. What do you do with them?
A. They are returned to the book keeper.
Q. As secretary of the company and director you don't know what becomes of the checks?
A. I never mailed any of them myself. I presume they are mailed to them, but I never mailed them.
Q. Mailed to whom?
A. To the party to whom the check is payable.
77 Q. What instructions are given to your employés about them?
A. If the party has a check coming to him the check is sent to him.
Q. As secretary of the company, when you sign a check do you compare it with the balance in the statement?
A. Generally when a check is sent to me there is a bill attached to it. I generally look at the statement to see if the check will correspond in a general way. I may not figure it out in dollars and cents, but to see that the check is approximately right.
Q. What do those statements contain?
A. A memorandum of the transactions.

Q. You have said they give the number of the trade for one thing?

A. Yes.

Q. Do they give the price at which the trade is opened?

A. Sometimes, not always.

Q. When don't they give the price at which the trade is opened?

A. If the correspondent making these trades asks for a written confirmation, the confirmation on his statement will show the price at which the trade was opened. Some do not want it and in that case there is none put on.

Q. In the case of Battle & Dickes, the statements rendered to Battle & Dickes and to Babb, do the statements show the number of the trade?

A. I do not think they do. Oh, the number of the trade.

Q. Yes?

A. Yes, sir.

Q. Now would not the statement show the opening price and the closing price?

A. It would not show the price at which the trade was opened, no.

Q. How can you determine from the statements whether the balance was due to Battle & Dickes—the balance was correct in statements, unless the statement contained the opening price?

78 A. The item on the statement showing whether the trade was settled would show what his credit was on the trade.

Q. That is, the statement might contain only the profit or the loss and the number of the trade?

A. It would contain the price at which the trade was closed out and probably the amount of the payment that we made on the trade.

Q. What do you mean by the amount of payment made on the trade?

A. The money that had been charged to Battle & Dickes or Babbs and credited on this trade.

Q. Well, is that amount conveyed in the telegram?

A. No, sir.

Q. How is that amount determined?

A. The first charge is generally one point.

Q. Now in the case of 1000 bushels of December wheat, when you get an order to buy it, you say the charge is one point; what do you mean by that?

A. The first charge against that trade is $10.

Q. That is by a general arrangement with those parties?

A. Yes, sir.

Q. So that every time you get a telegram and open a trade you charge against the trade $10?

A. After the trade has been executed?

Q. After the trade has been executed?

A. And entered on the books.

The MASTER: He don't mean that exactly, I guess. It means that particular trade of that particular size, that amount.

Mr. ROBBINS: Yes, one point on any trade.
The MASTER: If it was stocks it would be a dollar a share.

Mr. ROBBINS:

Q. $10 for 10 shares, would it?
A. Yes, sir.
Q. Well, now, what else do these statements show. You say they show the profits, and the $10 that is charged against the trade or the one point. Now what else do they show?
79 A. I don't know as they show the profit. They show the settlement. In settling the trade the number of the trade is given, the price it is closed at, the amount of payment made on it and the balance that is due on that trade, by the correspondent.
Q. By balance that is due, you mean the profit or loss, taking into the account the $10 already charged?
A. The profit or loss is deducted from the payment, whatever it is. The profit is added to it and the loss is deducted.
Q. Now what else does it contain?
A. In new business it contains the number of the trade, the amount of money that has been charged against that trade on that date.
Q. Well, as respect to a closed trade what other item appears in the statement?
A. None whatever.
Q. Is there a charge of a certain amount per trade for 1000 bushels or 10 shares of stock?
A. There is a charge in most cases against the total amount of business closed out during that day.
Q. How is that charge obtained?
A. By figuring up the amount of grain closed out and the number of shares of stock.
Q. Based on the number of shares of stock. And what is the charge in stocks?
A. It varies with different people.
Q. What is it in the case of Battle and Dickes and Babb?
A. Battle & Dickes I think the charge is 25 cents on 1000 bushels of grain and 1/16 of 1 per cent. on 10 shares of stock. With Babb there is no charge on his grain. 50 cents for 10 shares of stock.
Q. That is you retain or you derive by these statements, from Babb and Battle & Dickes, these amounts upon all their trades?
A. We do not get any statement from those people.
80 Q. I didn't say statements from them.
A. I understand you did.

(Question read.)

Q. I say from your statements. On the statements from Battle & Dickes do you derive——

A. You say derive these amounts from statements from Battle & Dickes. That is the way I understand your question.

Q. Understand it differently. Do you derive from Battle and Dickes through these statements a certain charge for ten shares for each ten shares of stock, and a certain charge for each 1000 bushels of grain. Is that right?

A. We charge them a certain charge, yes.

Q. And take it out through these statements?

A. It is charged up on their statements.

Q. Who has charge of these leases?

A. I don't know.

Q. Well, the wires from the Western Union Telegraph Company?

A. I don't know.

Q. You don't know what? You never saw them?

A. No, sir, I don't think I ever seen any of them.

Q. Who of your company would probably have charge of these leases?

A. I don't know that unless the directors some of them. I don't know anything about them.

Q. I wish you would give the officers and directors of the company?

A. W. H. Gosdlin is president.

Q. Where does he live?

A. Hammond, Indiana. Richard McHie is the assistant treasurer, and he lives at Hammond, Indiana.

Q. What is his first name?

A. Richard. And outside of myself those are the only officers I know of.

Q. Who are the directors? Who is the treasurer?

A. I don't know.

Q. Now the directors?

81 A. I don't know all the directors. I know some of them. I am one of them. Mr. Gosdlin is a director. Richard McHie is a director. T. J. Meany is a director. I don't know who the others are.

Q. Do you have any wire connections with persons in Chicago?

A. We get business from people in Chicago, yes.

Q. Who are the so-called correspondents of your company in Chicago?

A. We have C. H. Wanzer, and I don't recall any other one right now. Yes, another one, his name is Wershen, I think that is his name. He is located here in Chicago somewhere. I don't recall any other though.

Redirect examination.

By Mr. WHITMAN:

Q. Mr. Williams, you spoke of a charge on these statements to your various correspondents as you call them, of 25 cents or 50

cents on wheat and 1/16 of 1 per cent. on stock. What are those charges for?

A. Wire service.

Q. Do they so appear upon these statements?

A. Yes, sir.

Q. The amount of the charge being determined by the volume of business done?

A. By the volume of the business closed out that day.

Q. Where does Mr. Richard McHie live?

A. Hammond, Indiana.

Q. You stated you and Mr. Gosdlin live there too?

A. Yes, sir.

Q. Do the so-called correspondents, or do Battle & Dickes or Babb, ever sign checks for the Hammond Elevator Company, or for any one else on the accounts in the several local banks of the Hammond Elevator Company?

A. No, sir.

Recross examination by Mr. ROBBINS:

Q. In the case of Battle & Dickes—of Babb's grain trades, you do not make this so-called wire charge?

A. No, sir.

Q. And the wire charge is the same regardless of the length of the wire?

A. The wire service charge, why it differs with different people. I don't known as the length of the wire has anything to do
82 with it.

Q. Well, the wire charge for stocks is the same to Babb as it is to Battle & Dickes, is it not?

A. No, sir.

Q. What is the charge to each?

A. The charge to Babb $5 a hundred on stocks. We charge Battle $6.25 a hundred on stocks.

Q. So that the man that has the shortest wire service pays the largest amount?

A. I don't know anything about that.

Q. Don't you know that Aurora is nearer to Hammond——

Mr. WHITMAN: I object to that. That is not cross examination. I did not ask him anything about that on direct examination.

The objection was sustained.

Mr. ROBBINS: We reserve the right to call him back.

Mr. WHITMAN: Not with my consent.

Mr. ROBBINS: If I have overlooked anything I would want him back.

Mr. WHITMAN: If you can get Judge Kohlsaat to help you serve him.

I call for the witness S. O. Tripp, your honor.

S. O. Gripp, S. O. Tripp, S. O. Tripp.

Mr. Tripp not appearing, your honor, I offer in order to keep my record straight the chancery summons, or rather I file with your honor a chancery summons or writ *ad respondendum* on S. O. Tripp, with return of process showing service of the same, and upon which he has accepted his attorney's fees, and ask for an attachment.

The MASTER: I will set the case for Monday morning, and I will see Marshal Ames myself and ask him to see that Mr. Tripp is here.

Thereupon the further hearing of this cause was continued until Monday, October 26, 1903 at 10 o'clock a. m.

83 MONDAY, *October* 26, 1903—10 o'clock a. m.

Parties met pursuant to adjournment.
Present: As before.

S. O. TRIPP, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. WHITMAN:

Q. What is your name Mr. Tripp?
A. S. O. Tripp, Peoria, Illinois.
Q. What is your business?
A. Deputy U. S. marshal.
Q. What was your business on the 9th day of July, 1903?
A. Same, deputy U. S. marshal.
Q. I show you a *subpœna ad respondendum* in the case of Board of Trade of the City of Chicago *vs.* Hammond Elevator Company and call your attention to the signature purporting to be the signature of S. O. Tripp and ask you whose signature that is?
A. That is my signature, sir.
Q. You delivered a copy of this subpœna to one Albert H. Babb, did you?
A. Yes, on the 9th day of July.
Q. On what?
A. On the 9th day of July, 1903 at Peoria.
Q. At the time that you delivered the copy, did you have the original subpœna with you?
A. Sir?
Q. Did you have the original subpœna with you?
A. My recollection is that I did. I am not sure about that.
Q. Are you sure that you ever had the original subpœna?
A. Probably I can tell from a letter of instructions I received in regard to that. (After consulting paper) No, I believe I only had the copy of the original in that case.
Q. Have you got that copy with you?
A. Yes, sir, I have a letter here of instructions from the marshal's office. I made my return on a separate piece of paper and delivered Mr. Babb the copy of the original—or it was supposed to be the original.

84 Q. Did you deliver him what you received as a copy?
A. Yes, sir.
Q. Have you your letter of instructions with you? Will you produce it? (Witness produces letter.)
Q. You received this copy in the letter dated Chicago July 8, 1903?
A. Yes, sir.
Q. Signed John C—— what is it?
A. Ames.
Q. Ames?
A. U. S. marshal.
Q. Now did you ever receive any instructions as to the service of that writ other than those contained in this letter?
A. No, sir; I made the service about a half hour after receiving the letter, on the morning of the 9th.
Q. Did you on July 9, 1903, know the Hammond Elevator Company?
A. No, sir.
Q. Did you know this man Babb whom you served?
A. Yes, sir.
Q. Did you outside of the instructions which you received from the United States marshal, did you have any information as to any relationship between Albert H. Babb and this unknown Hammond Elevator Company?
A. No, sir.
Q. Outside of an- independent of your letter which you speak of from United States marshal giving you instructions as to service did you then or at any time have any information that Albert H. Babb was at any time or was on the 9th day of July, A. D. 1903, an agent of the Hammond Elevator Company?
A. No, sir.
Q. Prior to the time that you served this writ upon Mr. Babb had you ever received any information except as contained in this letter from Mr. Ames, from any source, to lead you to believe that Mr. Babb was the agent of the Hammond Elevator Company?
A. I received two letters on former services, but I don't think the Hammond Elevator Company was mentioned. I will look (After referring to papers) No, sir, that is the first information that I had.
85 Q. These other letters you refer to were——
A. Other cases.
Q. And you served the writ upon Mr. Babb in pursuance of and in accordance with the instructions contained in this letter of July 8, 1903?
A. Yes, sir.
Q. Is this Mr. Ames' signature here?
A. Yes, sir, I think it is.

Mr. WHITMAN: Showing witness the letter dated July 8, 1903.

A. Supposed to be his signature.

Mr. WHITMAN: I will ask to have this letter marked.
The WITNESS: I would not like to part with the letter.
(The letter was marked for identification "Defendant's Exhibit 1, F. M. S.")

JOHN C. AMES, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. WHITMAN:

Q. I show you, Mr. Ames, Defendant's Exhibit 1 for identification and ask you whether you recognize that signature?
A. Yes, sir.
Q. Do you recall sending that letter to Mr. Tripp, giving him instructions as to service of process on Albert N. Babb?
The MASTER: H.
A. It is Albert N. here.
Mr. WHITMAN: It is Albert N. in the letter.
Q. To assist in refreshing you recollection, I will show you also *subpœna ad respondendum* issued in the case, and I will explain that the letter we are advised by Mr. Tripp contains a copy only of the process which he served and returned.
A. Well, this part, this first paragraph, is all that relates to——
Q. That is all that we are concerned with.
A. The other is some instructions about some——
Q. I will read the part that I refer to, as follows: "Dear Sir: I enclose you herewith copy of a writ to be served on Albert N.
86 Babb of your city, who is an agent for the defendant company. As writ is returnable on Monday, the attorney for the plaintiff is very desirous of having it served as soon as possible. Please advise me by first mail as soon as you have served it."
A. That is my signature. I wrote that letter. That is the instruction.
Q. Do you remember what process that referred to?
A. No, I do not.
Q. Do you know whether or not it referred to process which I show you, *subpœna ad respondendum* returned served by Mr. Tripp on Albert N. Babb agent for the Hammond Elevator Company?
A. I have no doubt it means that same service. I do not remember, but the letter would show that it meant that service.
Q. Do you know Albert N. Babb, Mr. Ames?
A. No, sir.
Q. Have you ever seen him?
A. No, sir, not to my knowledge.
Q. Did you know him on July 8, 1903?
A. I never knew him that I know of.

Q. Did you know the Hammond Elevator Company?
A. No.
Q. Do you know the Hammond Elevator Company now?
A. No, sir.
Q. Did you have any reason to believe, or any information on July 8, 1903, to the effect that Albert N. Babb was the agent of the Hammond Elevator Company?
A. No reason, unless through the attorneys.
Q. Just explain what you mean by that?
A. We don't know hardly anybody we serve, and we get our instructions through the attorneys in the case and they tell us who they want served. The writ shows who they want served, it states in it. We instruct——
Q. Take this writ. It simply says 'Hammond Elevator Company.' To whom does this information from the attorneys come first? Are you the person to whom it is given?
87 A. No, generally the chief deputy, Mr. Patterson generally has all that information. I hardly ecer see any of these writs at all.
Q. The information upon which you based the statement in this letter of July 8, 1903, Defendant's Exhibit 1 for identification to the effect that Albert N. Babb was the agent of the defendant was derived from Mr.——
A. Patterson, probably, and he can answer for himself—or Fraley. Well, if Mr. Patterson is not there, Fraley. It was turned over to Fraley.

Mr. WHITMAN: For the convenience of the court, without offering the exhibit in evidence, I would like to read into the record that portion of this letter which is material.
It is on the letter head of the department of justice, northern district of Illinois.

"CHICAGO, *July* 8, 1903.

S. O. Tripp, Esq., deputy U. S. marshal, Peoria, Illinois.

DEAR SIR: I enclose herewith a copy of a writ to be served on Albert N. Babb of your city, who is an agent for the defendant company. As this writ is returnable on Monday, the attorney for the plaintiff is desirous of having it served as soon as possible. Please advise me by first mail as soon as you have served it."
(Signed)
Very respectfully JOHN C. AMES,
U. S. Marshal."

(The following two paragraphs are not with reference to this matter.)

88 Thereupon the further hearing of this cause was continued until Monday, November 2, 1903, at 10 o'clock a. m.

NOVEMBER 2, 1903.

On account of the absence of Mr. Robbins from the city, and with the consent of counsel for defendant, the further taking of testimony in this cause was continued until November 9, 1903, at ten o'clock a. m.

MONDAY, *November* 9, 1903—10 o'clock a. m.

Met pursuant to adjournment.
Present: Messrs. Robbins, Whitman and Brown.

C. S. BATTLE, a witness produced in behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. ROBBINS:

Q. What is your name?
A. C. S. Battle.
Q. You are of the firm of Battle & Dickes?
A. Yes, sir.
Q. Of Aurora?
A. Yes, sir.
Q. How long has that firm been in existence?
A. Something over two years, I think.
Q. Were you engaged in business in Aurora on the 8th and 9th of July, 1903?
A. Yes, sir.
Q. How long before that had you been in business in the same office you were occupying at that time?

Mr. WHITMAN: Now, if your honor please, I object to the examination as to the conditions in July, 1903, on the ground that the return shows that the service was made on the 8th and 9th of July, 1902, and the question in this case is whether these parties were agents of the defendant company on the date that the summons appears to have been served.

Mr. ROBBINS: The marshal, in certifying to the service on one of the firm of Battle & Dickes, says the 8th of July, 1902, and as to the other, says the 8th and 9th day of July, 1903. It is an apparent mistake.

Mr. WHITMAN: And he also swore on the stand that the return was true; sat there and read it over.

Mr. ROBBINS: It is an apparent mistake, because the writ is dated 1903.

Mr. WHITMAN: It is not any more apparently untrue than it is that it was served on the 8th day, when as a matter of fact they did not have the original summons and process down there to serve it at all. We cannot tell at all when Mr. Robbins got service in this suit.

Mr. ROBBINS: Well, the purpose of this inquiry is to find out the situation in July, 1903.

The MASTER: Let me see the process.

Mr. WHITMAN: On the question of whether these parties were agents of the defendant company in 1902, we simply rested on the fact that we were not organized at that time.

The MASTER: Oh, I think that is so plainly a typographical error that I shall allow the witness to answer.

Mr. WHITMAN: I don't think any examination could be based on that assumption until the return, if your honor's assumption is true, is properly amended.

Mr. ROBBINS: Service on this man is 1903. It is Dickes' that has the date 1902.

Mr. WHITMAN: That is right. Battle was served in 1903.

The MASTER: I think he may answer.

Mr. WHITMAN: Then I withdraw the question, your honor.

(Question read.)

A. Previous to July, 1903? I had been in business in this office since July, 1900, I think.

Q. What was the nature of the business?

A. Brokerage business.

90 Q. Covering what commodities?

A. During that time? Previous to that stocks and bonds and grain.

Q. Was there any telegraph wire running into your office?

A. Yes, sir.

Q. During that time?

A. Yes, sir.

Q. Was that a public wire or a private leased wire?

Mr. WHITMAN: We object to that as calling for the conclusion of the witness and not the best evidence.

The MASTER: I think it is objectionable possibly, as calling for a conclusion.

Mr. ROBBINS: What is the ruling of the master?

The MASTER: The objection is sustained.

Q. Where is the other end of that wire, if you know?

A. I could not say.

Q. You don't know where it runs to?

A. No, sir.

Q. What?

A. No, sir.

Q. Do you know whether it runs into or through the office of The Hammond Elevator Company, the defendant in this case?

A. Well, I could not say that I know it does, no I suppose it does, but I don't know.

Q. What do you know about it? How did it happen to come there and who pays for it?

A. Well, I know we have a wire running into our office.

Q. What else do you know about it?

A. I don't know as I know what you are leading up to.

Q. I want to find, Mr. Battle, whether you know whether the wire runs into the office of the defendant in this case, at Hammond, Indiana, or not?

Mr. WHITMAN: I object to the question as immaterial and irrelevant.

The MASTER: I think he may answer it.

Mr. WHITMAN: The question is not what the relations of the parties are to-day. He cannot back into this thing, crawfish
91 fashion. The issue made upon our motion to quash is that the defendant company was not on July 8th or 9th, 1903.

The MASTER: I think the inquiry should be confirmed to that date.

Q. Do you know whether that wire on the 9th of July, 1903, and for a year and a half before that time ran into the office of the defendant in this case, at Hammond, Indiana?

A. Well, as I said before, I don't know anything about these wires. I don't know where they ran to. The supposition is that they did, but I don't know anything about their wire system.

Q. How did the wire happen to come into your office originally?

A. It was put into my office nearly five years ago.

Q. By whom?

A. I think the Western Union put it in there.

Q. At whose instance?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

The MASTER: If he knows he may answer.

A. Well, I cannot say whether the Western Union handles those things themselves, or how that matter is.

Q. Well, how did the Western Union wire come to be put into your office. You have control of your end of the matter, do you not?

A. Well, I have my office, yes.

Q. Well, now, how did it come to be put in your office?

A. Well, because I ordered the wire.

Q. You ordered the wire?

A. Yes, I ordered the wire put into my office.

Q. From whom?

A. Why, I think it was at that time the Central Stock and Grain Exchange, or the Central Grain and Stock Exchange.

Q. Where was that concern located?

A. Rookery building.

Q. Chicago?

A. Yes, sir.

Q. Who was the managing man in it at that time?

92 A. I think that Mr. McHie was the man.

Q. Did you have a written contract about that wire at that time?

A. I think not.

Q. With Mr. McHie or his company?

A. I think not.

Q. Well, what was that wire used for at that time?

A. Why, it was used for quotation service, and to send orders. Gossip or anything that I wanted to use it for, pertaining to the business.

Q. Your dealing was with Mr. McHie and not with the Western Union Telegraph Company about that wire and the putting it in.

A. Well, in a measure you are, and in other words, you are dealing with the Western Union. The Western Union seems to dictate as to what you shall do with it.

Q. Well, what officer of the Western Union did you deal with?

A. I did not deal with an officer of the Western Union, only the local manager, from time to time.

Q. Well, what dealing have you had with anybody connected with the Western Union, in reference to this wire we are talking about?

A. I cannot say who their men are, the men come there and look after it and take care of it, that is all.

Q. What officer of the Western Union did you have to do with in reference to having the wire put in?

A. I didn't have anything to do with any of the officers of the Western Union in regard to having it put in.

Q. Was it a Western Union wire?

A. Why as I understand they control the wires, all Western Union wires.

Q. And the only person that you had to do with in reference to that wire, was Mr. McHie or his company, at that time?

A. That is all at that time, yes.

Q. Well, how long did that wire continue to be in your office, running from your office to the office of Mr. McHie's company?

93 A. As long as they were in business, I think.

Q. How long was that?

A. Well, I could not call that. I do not know.

Q. Well, approximately?

A. Well, I do not know when they went out of business. I could not state because I cannot remember it.

Q. Well, about how many months ago; give your best recollection?

A. Well, it is possibly two years, and it may not be. I don't know how long it is.

Q. Well, what happened when that company went out of existence?

A. There was a new company formed, as I understand it.

Q. What was the name of that company?

A. I think it was the Central Grain & Stock Exchange, I don't know whether it was the Grain & Stock or the Stock and Grain.

Q. Who was the principal man in that company?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

The MASTER: He may answer if he knows.

A. Well, I don't know, I cannot remember.

Q. Whom did you deal with in connection with that company?

A. Well, I dealt with the men in the office that did the business there, the employees?

Q. Was Mr. McHie around that office?

A. I could not say whether he was or nor I don't know whether he was an officer in that company or not.

Q. Where was the office, the same place that the other office was?

A. Well, I would not say whether that was changed before they left the Rookery or after the- went to Hammond. I have forgotten.

Q. Well, how long did you have to do with that company in connection with this wire?

A. Until the Hammond Elevator Company was incorporated, I think.

Q. When was that?

A. Why, I should judge about a year ago. I don't know just when it was incorporated. It might be about that. I would
94 not say how long it was.

Q. Where was then the office of the Hammond Elevator Company?

A. Why at Hammond, Indiana, I think.

Q. Did the Hammond Elevator Company succeed this other company that you are speaking of?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness. Is this lay witness going to pass upon the question of whether one corporation succeeds another corporation or what it means?

The MASTER: I think if you mean with reference to this wire.

Mr. WHITMAN: I don't know what he means, your honor. No one else knows.

The MASTER: I think the question is objectionable.

Q. Where was the office of the elevator company that, as respects this wire, preceded the Hammond Elevator Company?

Mr. WHITMAN: What is that question? Read it.

(Question read.)

Mr. WHITMAN: I object to the question as unintelligible.

The MASTER: I think that is intelligible.

The WITNESS: You will have to read the question. I don't understand the question.

(Question read.)

Mr. ROBBINS: Scratch out the word 'elevator.' Where was the company?

Mr. WHITMAN: Read that question to me now slowly will you?

(Question read.)

Mr. WHITMAN: I object to that as assuming the very conclusion that counsel sought to extract from the witness by the previous question, my objection to which was sustained by your honor. He is going to assume now the sequence.

The MASTER: The witness has testified to substantially that.

95 Mr. WHITMAN: No, your honor.

The MASTER: He may answer the question.

A. I don't understand the question. I don't know what you want me to — in that way.

Q. What was the name of this company that you had the wire from before the Hammond Elevator Company came into existence?

A. As I said before I think it was the Central Stock and Grain Exchange, or the Grain and Stock Exchange. I would not say which one.

Q. Now where was the office of that company?

A. Why, I think it was at Hammond, Indiana.

Q. Now where is the office of the Hammond Elevator Company?

A. They do business in Hammond, Indiana. I don't know where their offices are, their business offices. That is as far as I know.

Q. Have you ever been to Hammond, Indiana?

A. I went there once, yes.

Q. When?

A. I guess about six months ago.

Q. How long after you ceased to have a wire from this company called by you the Central Company, was it that you got the wire from the Hammond Elevator Company?

A. I got the wire the next morning.

Q. Was there any break in the wire?

A. I could not say as to that.

Q. I mean by that, was there any break in your having a wire break in point of time?

A. I quit using the wire at two o'clock, and we used the wire from the Hammond Elevator Company at nine o'clock the following morning.

Q. Well, what happened to explain that change to you? Did you receive any notice of a change?

A. We received notice from the Central Stock & Grain Exchange that we should transfer our business or close it out to the Hammond Elevator Company.

96 Q. Now was there anything else that was said about the wire at that time?

A. No, sir, not to my recollection.

Q. Now from that time to the 9th of July, that wire was running from your office to the office of the Hammond Elevator Company in Hammond, Indiana, is that right?

A. Well, I suppose it was. As I said before, I don't know. I suppose it was though.

Q. Well, during that time though, you used that wire to send any

messages to Hammond, Indiana, to the Hammond Elevator Company?

A. Yes, sir.

Q. Have you received any messages over that wire purporting to come from the Hammond Elevator Company?

A. Yes, sir.

Q. Have you received each day statements in writing by mail that referred to transactions and orders going over that wire?

A. Received a statement of our business, yes, sir.

Q. Confirming the orders that go over the wire?

A. Yes, sir.

Q. And yet you say you don't know whether that wire runs to the office of the Hammond Elevator Company?

A. I cannot say——

Mr. WHITMAN: Wait a minute. I object to that as leading and argumentative.

The MASTER: The objection is sustained.

Q. As a matter of fact don't you know that the wire we are talking about runs from your office to the office of the Hammond Elevator Company, and has run that way since the change to the Hammond Elevator Company?

Mr. WHITMAN: Now your honor, I ask the court to instruct the witness that I have got the right to have time here to interpose my objections, and he should not get so red hot with his answers. I object to that question as leading.

Mr. ROBBINS: This is specially a case where leading questions ought to be permitted. Here is a man that comes right from this defendant outfit.

97 Mr. WHITMAN: That is what you are trying to prove. On the contrary, for all I know, he is a fellow conspirator with these complainants.

The MASTER: I think he may answer the question.

To which ruling the defendant excepted.

(Question read.)

A. As I said before, I suppose it did, but I don't know it as a fact, because I am not acquainted with the wire service and have nothing to do with it, one way or the other, don't know where they get their orders from or where they go to put them on the wire.

Q. I would like to have you explain, Mr. Battle, how these trades are made. First I will ask you if there are any people coming into your office to make trades during the period that we are talking about, for a year and a half prior to July 8th and 9th, 1903?

Mr. WHITMAN: I object to that as immaterial and irrelevant, at least in part, it appearing from the record that the Hammond Elevator Company only went into business about the first of January, 1903, which is ten months ago. We have no concern with trades

prior to that date. Your honor will see that that goes back just about a year and a half before the issues were made in this case.

The MASTER: Well, I think that it is competent to explain. I understand that the transactions with the Hammond Elevator Company are substantially of the same character as the transactions with the Central Grain & Stock Exchange.

Mr. WHITMAN: Well, your honor cannot understand from the record in this case. There is nothing of that kind here yet. It would not be allowed to be proved anyway.

The MASTER: I think you will have to restrict your ques-
98 tions to the time since the Hammond Elevator Company was incorporated.

Mr. ROBBINS: I am, but the witness says that was at the time. I am taking his time. Let us agree in the record, and we will continue our examination.

Mr. WHITMAN: It went into business whenever you have proved it went into business. The secretary testified when it went into business. If counsel disputes that and will state he askes this question on his proposal to show the company did go into business at some other time than appears in this record, well and good, and if he does not show it, we can urge our objections before your honor, and have the testimony stricken out. If your honor is going to draw conclusions from the other case——

The MASTER: I have stated that the inquiry must be confined to the transactions with the Hammond Elevator Company.

(Question read.)

Mr. ROBBINS: I will amend that question by saying, "between January 1st, 1903 and July 9th, 1903."

A. Yes, there was people came into my office.
Q. For what purpose?
A. To do business.
Q. Make trades in stocks and grain?
A. Yes, when I handle grain they do.
Q. They give you an order do they, when they complete the trade?
A. They tell me the business they want to transact, yes.
Q. When they want to buy they tell you what they want to buy and the price?
A. Sometimes, yes, they state the price and sometimes they don't.
Q. Do they put that order in the form of a writing?
A. Not always, no.
Q. Do they ever?
A. Sometimes, yes.
Q. Have you a form of that order with you?
A. I have not.
Q. Look at an exhibit introduced in another case, marked Plaintiff's Exhibit 1 and see if that is the form of order that was
99 signed by your customers?

Mr. WHITMAN: I object to the reference to the paper handed to the witness as "an exhibit in another case," or its attempted identification by its marking in another case, and ask to have the paper marked for identification before it is exhibited to this witness. And I further object because the paper in question on its face appears to be (whether a form of Mr. Battle's or whose ever form it may be) used prior to the organization and incorporation of the Hammond Elevator Company as disclosed by this evidence, and that no examination as to that form or that exhibit could be pertinent or material or admissible in this case.

The MASTER: I think he may answer it.

To which ruling the defendant excepted.

(Question read.)

Mr. WHITMAN: I object to that until the question is limited to the period within which the witness was doing business with the Hammond Elevator Company.

The MASTER: The inquiry has been limited to the time when he was doing business with the Hammond Elevator Company already.

Mr. WHITMAN: As long as it is so understood by the witness that is all I care about.

A. Yes, I think that is the form of the order.

Mr. ROBBINS: I offer this in evidence, and because it is already an exhibit in another case, I ask the privilege of reading it into the record.

The MASTER: That may be read into the record.

Mr. WHITMAN: I object to it.

The paper, which was marked Complainant's Exhibit 1, case No. 26588, is in words and figures as follows:

100 "We will receive no business except with the understanding that the delivery of all property bought and sold for your account is in all cases contemplated and understood.

BATTLE & DICKES,
Commission Merchants.

Aurora, Ill., 1–5–1903.
(101½.)*
(950 a.)*
Buy for my account and risk 10 U. Pac. 101½.
Op.
I accept all risk in this purchase until closed, and authorize you to call on me for all margins required.

R. LINDANE.

No. 573.
Tel."

[† In blue pencil in copy.]

Q. Mr. Battle, in the questions that I now ask you about the method of business, you will understand that I am confining the inquiry to the date between January 1st, 1903 and July 10th 1903. When a customer sends an order of this kind, what is the next step?

A. That is simply a memorandum that I place on file.

Q. Well, what is the next step in the transaction when a customer signs a paper of this kind?

A. The next step I send an order to buy it or sell it.

Q. Do you write out the order or is it——

A. Sometimes I do and sometimes I do not. There is a good deal of that business done verbally where there is not any orders issued at the time?

Q. Where there is a written order, is this order handed to the telegraph operator by you?

A. Yes, sir, generally.

Q. And what does he do with it?

A. He sends an order to buy the commodity or sell it, as I say.

Q. What is the form, if you know, of the order that is
101 sent over the wire by the telegraph operator for this supposed transaction?

A. He sends an order that he wants to buy that commodity at a stated price, or that the firm does, of Battle & Dickes.

Q. Well, can you give the wording of the order.

A. Well, I don't know as I could just exactly give you the wording of the order, because——

Q. See if I can give you the wording of the order: "Buy ten U. P. 101½ Op. No." giving a number. Is that the form of the order?

A. I don't know. I think it is, though, similar to that.

Q. It is substantially like that?

A. The supposition is that I send that order to the Hammond Elevator Company to buy of them that stock for my customer.

Mr. ROBBINS: I move to strike out what the supposition is.

A. There is not any supposition. I say that is the fact. That is my order.

Mr. ROBBINS: I move to strike it out.

The MASTER: Answer the question, Mr. Battle. Just answer the questions.

(Question read.)

Mr. WHITMAN: I object to that as leading.

The MASTER: He may answer.

A. Substantially like what?

Q. Like the telegram I suggested just given you "Buy 10 U. P. 101½ Op. No." giving a number. Is that the form of the order?

A. The form of the order, if it was correctly sent—the operator would be instructed to buy of them or sell to them, as the case might be.

Q. Do you preserve the orders?
A. No.
Q. How long are those telegrams preserved?
A. They ain't preserved at all.
Q. Not preserved at all?
102 A. All the preserve there is on it is right on that order there.
Q. Are they written out?
A. They are just like that right there.
Q. Are they written on paper before they are sent?
A. No, I don't think so, not generally.
Q. So the telegraph operator makes up his order from having that before him?
A. Generally, yes, I think so.
Q. Does the message as it goes over the wire, give a number?
A. If it is a new trade it does, yes.
Q. If it is an order to open a trade, a number is given to the order as soon as it is received?
A. I think so.
Q. By you?
A. No, not by me, the operator.
Q. By the operator, and that number is mentioned in the telegraphic order, is it?
A. I think so.
Q. That number is preserved all through the trade until it is closed out, is it not?
A. Yes, sir.
Q. Is the trade entered upon your books under that number?
A. Sometimes, and sometimes it is not.
Q. What is the next step now in the transaction. What comes next to your office after the telegram is sent by your operator?
A. The next step to the order, we never hear of it unless it is filled.
Q. Do you ever get a telegram back concerning that order?
A. If it is filled we get an answer on it, yes.
Q. Does that telegram come over this same wire?
A. Yes, sir.
Q. From the Hammond Elevator Company?
A. Yes, sir, I suppose so.
Q. Is that telegram written out and handed to you?
A. Just simply confirms that by ringing that and putting that blue pencil on there.
Q. The telegraph operator does not write the order out received from the Hammond Elevator Company?
A. No, I think he just simply rings that on there and that fills.

103 Mr. WHITMAN: I think it is apparent right there, the inadvisibility of using exhibits in this case that cannot be pre-

served in the record. Now how is the stenographer going to copy the ring around there in blue pencil?

The MASTER: He can do it, I have a blue pencil.

Q. In the exhibit that has been offered I notice two numbers within a blue pencil mark. What are the numbers?

A. Here (indicating?)

Q. Yes?

A. 573. In the ring, you mean?

Q. Yes? 573 is not in the ring at all, is it?

A. No.

Q. Now what is in the ring?

A. 101½.

Q. What does that mean?

A. Well, that means that the trade was filled—they sent me a message stating that they had sold to us this stock at 100½ and the time on there at 9.50 in the morning, I think. I think that is what it is.

Q. Now then, when the telegram comes back from the Hammond Elevator Company saying that the order is filled——

A. No, it don't say that the order is filled. It specifies the order in full to the operator, I suppose.

Q. When the telegram comes back from the Hammond Elevator Company, your operator then takes the written order of the customer, and on it he marks the price in blue pencil mentioned in the returning telegram, and also the time, giving the minute at which the telegram is received. Is that right?

Mr. WHITMAN: I object to that as leading, and also on the ground that it has been asked and answered before.

The objection was overruled, to which ruling the defendant excepted.

A. Well, as I said that order lies before him. He gets a telegram that that stock is sold to us at that price, and he writes that down on a sheet of paper there and then he finds the order and picks it up and rings it, puts a price on there. That is simply as a memorandum.

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Q. Now what communication, if any, do you make to your customer then, who has sent the order?

A. Well, when I buy it I notify him that I have bought the stock for him or sold it, as the case may be.

Q. When the return telegram comes from Hammond, then you notify him that the trade is——

A. I don't notify him before it comes, no. But not necessarily at that time. I might not notify him for a week or a day or two.

Q. Why do you say you do not notify him before it comes?

A. Because I would not notify him that they had an order filled before it was filled.

Q. Then the trade as to the customer is not completed until you get the telegram back?

A. Why, I don't—if a man gives me an order to buy him something I do not notify him I have bought it for him until I have purchased it.

Q. So that the customer has no trade until the telegram comes back?

A. Why——

Mr. WHITMAN: Is not that same thing true on the board of trade?

A. Why certainly, he would not have any commodity until I had bought it for him.

Mr. ROBBINS: I would like the witness to answer that question yes or no without any ifs or ands.

A. I cannot answer the question the way you put it.

Mr. ROBBINS: Read the question to the witness.

(Question read.)

Mr. WHITMAN: I think he has answered that two or three times, your honor.

The MASTER: Let him answer.

105 A. Why, as I said before there is no trade until I have completed the purchase; whether it is by telegram or whether I bought it of some other party.

Mr. ROBBINS: Now I would like to have the witness answer that question yes or no.

Mr. WHITMAN: He has answered it. There is no reason why the witness should answer it yes or no. I object because it calls for the conclusion of the witness. He has given counsel the facts, everything he is now asking the witness is a matter for your honor to decide.

The MASTER: I think that objection is well taken.

Q. Well, what is the next step now with the transaction after you notify the customer that the trade is filled?

A. Why, I generally give him a memorandum of his trade.

Q. Give him a memorandum of his trade; what does that memorandum say?

A. It states that I have bought or sold for him, as the case may be, the commodity and the price.

Q. Does it give the number of the trade?

A. Generally, yes.

Q. Does it give the price at which the trade is made?

A. Generally, yes.

Q. Does it specify the amount of deposit to secure that trade?

A. Sometimes, sometimes it does not.

Q. Does it specify the point to which the deposited margin carries the trade against him?

A. Sometimes it does, yes.

Q. That is figured in the market price, is it?
A. In the market price, yes, sir.
Q. What words are used in connection with that?
A. In connection with what?
Q. To indicate the price at which the trade is margined?
A. Why, generally put the figures down on memorandum.
Q. Is there any printing there indicating what those figures mean?
A. I think not.
Q. How does the customer know by looking at it that that is the price at which his margin runs out?

106 Mr. WHITMAN: I object to that as calling for a conclusion and the further ground that the forms employed for notifying customers are the best evidence of their contents. Oral evidence is not competent.
The MASTER: The objection is sustained.

Q. Have you any of the forms?
A. No, sir, I have not.
Q. Have you any in your office?
A. Yes, sir.
Q. Well, when you return I wish you would bring a form.
A. I might have one in my pocket. (A pause) No, I have not got one.
Q. Will you produce a form of the communication that is made by you to your customer when the telegram comes back from Hammond saying the trade is made?
A. You want the form of one of my statements to my customers, is that the idea?
Q. Yes. And if you will I wish you would fill it out to conform to this particular trade here.

Mr. WHITMAN: Well, I object to that unless you want to pay him a salary to come up here and amuse you.

Q. Will you do that Mr. Battle?
A. I will bring you a form, yes.
Q. Will you fill it out so as to conform to this order?

Mr. WHITMAN: I object to this as irrelevant and immaterial. We do not care whether he does or nor. It would be no use in this case.
The MASTER: I don't think that you can require a witness to do that, Mr. Robbins.
Mr. ROBBINS: No, but I asked him whether he would do that.
The MASTER: Yes, you may ask him.

A. I will bring you a memorandum of my own that I have.

Mr. WHITMAN: Hold on. There is no question before the witness.
The MASTER: Yes, he asked him whether he would fill it out.

Mr. WHITMAN: Well, I have objected to it. He has asked
107 him two or three times.

The MASTER: I say you may ask him whether he will or will not.

A. I will bring you a memorandum properly filled out of a trade of my own, trades that I have with the Hammond Elevator Company personally, if that will be answering the requirements.

Q. I did not ask you for that. If you fill it out at all, you will please fill it out to conform with this order. If you are unwilling to do that, produce it in blank.

Mr. WHITMAN: I object to that. I don't believe counsel has any right to prosecute that examination any further, and he has no right to put the witness on record as to whether he will do that or not.

The MASTER: He has asked him to produce it in blank.

Q. Now if the market on the trade in the case supposed goes against the customer, what is the next step in the transaction?

A. He generally puts up more money.

Q. What makes him put up?

A. He deposits more money if the market goes against him we require something to take care of the trade.

Q. Who requires something?

A. I do, or the firm.

Q. Then you call on him for more margins, do you?

A. Yes, sir.

Q. And he puts it up? And by way, what is the amount that is put up originally on trades in stocks by way of margin?

A. Well, the most of them are traded on account.

Q. What?

A. On account. There is a deposit made of anywhere from $20 to $1000 or $2000 for that matter.

Q. If the customer does not put up when he is called, what happens then?

A. Well, we generally close him out.

Q. Then how do you close him out?

A. I send an order to buy the stock in.

Q. Now what do you do? Just state what you do in the matter? You send an order. Do you write a telegram?

108 A. Well, yes, I write an order to send.

Q. Do you write an order on a telegraph blank?

A. No, I write it on that same form.

Q. You use that same form?

A. Generally, yes.

Q. Whose name do you sign to it in that case, your own or the name of the customer whose trade it is?

A. I sometimes do not sign it at all. I generally put the number on there. We know.

Q. Then you put upon that order the same number that is put upon the trade by the telegraph operator in the opening of the trade?

A. Why certainly.

Q. You say "To close No. so and so," giving the number of the trade?

Mr. WHITMAN: I object to that as leading.

A. No.

The MASTER: It is leading.

Mr. ROBBINS: Why, of -ourse it is leading. I cannot get anything out of these witnesses unless I do.

Mr. WHITMAN: Counsel forgets there is no jury here, and he wastes his time with that sort of statement. He has a witness here who has been more than eager to answer his questions.

The MASTER: Pursue the matter further without asking any leading questions, and then if you find it necessary, use more leading questions.

Mr. ROBBINS: Read the question.

(Question read.)

Mr. WHITMAN: Don't answer it, Mr. Witness.

Q. How does the number mentioned in this last order that you wrote out——

A. What do I understand by the last order that I gave out?

Q. The order you give to close, because the margins are exhausted.

A. The order is in the nature of a stop loss order.

Q. Well, how does it read when you write it out?

109 A. It is an order I should say, "Stop loss of commodity at a certain price," or sell or buy the commodity at a certain price to stop loss such a number.

Q. Giving the number of the trade?

A. Yes.

Q. When you write that order out, what is done with it then? Is it handed to the telegraph operator?

A. Yes, sir.

Q. And what does he do with it?

A. Transmits it, I suppose.

Q. Over this same wire?

A. Yes, sir.

Q. To the Hammond Elevator Company?

A. Yes, sir.

Q. What next happens in your office in connection with that trade?

A. If it is closed out, if the market reaches it or the nearest point to it.

Q. Well, what happens in your office? Does a telegram come back over the wire from the Hammond Elevator Company?

A. There is a message sent to us.

Q. Is that message written out by your telegraph operator?

A. Well, as I say he has the orders—yes, some of them, and sometimes he will do the same as he did on that.

Q. He uses a blue pencil the second time.

A. Well, he most always writes them I think, on stop losses, I think he does.

Q. Well, what does he write on the original order when the message comes back that is *is* closed out?

A. Well, I think he would write, "Sold to you such a stock" say 10 U. P. or whatever the commodity might be, at such a price to stop.

Q. Now what are you giving there, the form of the telegram that he sends?

A. No, I am giving the form of the telegram that they send.

Q. That they send to him?

A. I think so, yes.

Q. How does he write that out?

110 Mr. WHITMAN: I object to that. He has already answered that two or three times, your honor.

The MASTER: He said he thought he usually write it out.

Q. No-, how does he write it out? What form does it take when he writes it out.

Mr. WHITMAN: I object. He has just gotten through telling that your honor.

A. Well, I cannot state that any further than this. It depends on the business. Those are used in short forms, and like every other form of that nature or business of that nature, the operator does his work the shortest way, and he will write them and sometimes he will and sometimes he will ring them, just according to the time. He will write some of them.

Q. Well now, what else does he do?

A. Well, that is all there is to do about it.

Q. Did he communicate that message or those figures to anybody else in your office?

A. The operator?

Q. Yes?

A. Generally, he might, if there wasn't anybody there he might, or if somebody asked him particularly about an order he might answer it.

Q. How would the fact that that trade was closed get on to your books?

A. The book keeper would generally take it and enter it up.

Q. Where would he get it from?

A. He gets it from the copy of the order.

Q. The copy of the order? Do you give any notice to the customers?

A. Why certainly, we have to notify the customers sometimes.

Q. Well, sometime after the last telegram that you speak of is received, you notify the customer that the trade is closed out do you?

A. Why, they generally inquire about the trades. Certainly they went to know. Generally there is something said about it.

111 Q. Do you ever notify them about it before you receive the telegram from the Hammond Elevator Company?

A. No, I don't think so.

Q. Why not?

A. Well, as I said before, we don't notify people of business that is transacted until after the business is transacted.

Q. When the book keeper enters this trade on your books after the telegram closing it out, does he preserve the number of the trade?

A. No.

Q. How is that?

A. Excuse me. Read that question again.

(Question read.)

A. The number goes with the trade, yes.

Q. All through the books?

A. All through, yes.

Q. The trade is known by its number from start to finish is it?

A. Certainly.

Q. At the end of each day, do you send any communication to the Hammond Elevator Company as to the trades sent over the wire that day?

A. Do we send any?

Q. Yes?

A. No, not generally.

Q. Do they send you any?

A. They send us a statement in the morning or that night, yes.

Q. Each night?

A. Yes, sir.

Q. So that each morning you receive from the Hammond Elevator Company a statement of the number of trades made the day before, is that right?

A. Yes, sir.

Q. Do these statements give each trade by the number that is in the telegram?

A. I think so.

Q. Does it give the price at which the trade was opened?

A. I think not. I don't think the price is on the statement, no.

Q. See if that refreshes your recollection (handing witness a paper).

Mr. WHITMAN: What is it that you are showing the witness, Mr. Robbins? I would like to have the record show.

Mr. ROBBINS: It is an exhibit in the other case.

112 Mr. WHITMAN: Let us have it identified in some way.

The MASTER: It is Complainant's Exhibit 2 in case No. 26588.

A. What was the question?
Q. See if that refreshes your recollection?
A. What do I understand by refreshing my recollection?
Q. Enables you to testify as to whether the price——
A. Oh, I said before that the price is not on there.
Q. What is given on the statement that you receive from Hammond?
A. The opening and the closing of trades.
Q. What do you mean by the opening and the closing?
A. Well, I mean that the trades are on there that were opened that day, and the trades are on there that were closed out that day.
Q. Well, taking a single trade that was opened that day, what is given on the statement respecting that trade?
A. The number and the amount of shares.
Q. And the number of shares?
A. Yes.
Q. Now, is the price given?

Mr. WHITMAN: I object on the ground that the statement is the best evidence. We have got counsel's statement in here now that it is a statement with a number of a trade and we have a number of an exhibit that is headed with the Central Grain and Stock Exchange name, whis is getting us into endless confusion.
The MASTER: I think he may answer as to the general custom.
To which ruling *of* the defendant excepted.
(Question read.)

A. On an open trade there?
Q. In a statement, yes, of an open trade.
A. No, I think not.
Q. What is given beyond the number of the trade?
A. The number of shares.
Q. What beyond that?
A. That is all, I think.
Q. Look at that again, and see if there is anything else on it. (Handing witness document.)

113 Mr. WHITMAN: I object to that being used to refresh the witness' recollection. It appears to be a statement of transactions with the Central Grain & Stock Exchange and not with this defendant.
The MASTER: The objection is overruled.
Mr. WHITMAN: There is not a thing in this record here to-day to show what this statement is that is being used. Counsel might as well take a picture off the wall.
The MASTER: He could, and asked him if it refreshed his recollection.

A. I don't think there is anything in that statement of any price on the opening of the trade, as far as the trade is concerned. There is only two trades there.

Mr. WHITMAN: I have a right to object to a witness called by the other side refreshing his recollection except by a statement which under the rules of evidence he is allowed to refresh it by. In the first place you have to exhaust his recollection; then you have to use a written memorandum which the witness made.

(The record was then read by the reporter.)

Mr. WHITMAN: I move to strike out the answer.

The MASTER: I don't think it is competent to go into an examination as to that statement.

Mr. ROBBINS: I ask this witness to testify as to what these statements contain.

The MASTER: Yes, well that is proper. I said he might.

Mr. ROBBINS: First he said there was a number. Then I got out of him the quantity dealt in or the quantity of shares that was on it; then I asked him what else was on it; then I show him the statement.

Mr. WHITMAN: What statement do you show him?

The MASTER: Yes, but I don't think it is competent to inquire of the witness what this statement shows.

Mr. ROBBINS: I am asking what these statements show.

114 Mr. WHITMAN: Then the question is not proper put down as you ask it.

Mr. ROBBINS: Read it.

(Question read.)

Mr. ROBBINS: I will amend that by saying "Anything else on these statements besides the number of the trade, the number of shares, or the quantity of grain dealt in."

Mr. WHITMAN: Now if the reporter will read me the question as amended so I can see what it is.

(Question read.)

Mr. WHITMAN: I object on the same ground I have urged. That is a deliberate question as to what is on this exhibit here.

The MASTER: No, he said these statements.

Mr. WHITMAN: Well, he asked the witness to look at this statement which is a statement on its face appearing to be a statement of November 15, 1902, of transactions between the Central Stock Exchange at Hammond and Battle & Dickes.

The MASTER: If the question refers to this statement it is improper, but if the question refers to the statements which are now rendered to him by the Hammond Elevator Company, it is proper to ask the question.

Mr. WHITMAN: The question is, look at this and state what these statements refer to? Now I object to his looking at this and I object to any question based upon this.

The MASTER: Well, I think he may answer. He may refer to it.

To which ruling the defendant excepted.

Q. Now will you answer the question?

Mr. WHITMAN: Wait a moment. Is there a new question put?
Mr. ROBBINS: He has read it over to you two or three times.
Mr. WHITMAN: I want what you just said.

Q. Now will you answer the question?

Mr. WHITMAN: I object to the question on the same ground,
115 and ask for a ruling of the court.
The MASTER: Put your questions a little more plainly, Mr. Robbins.

Q. Please state what appears on the statements that you receive every morning from the Hammond Elevator Company as respects an individual trade beyond the number of the trade and the number of shares or bushels included in that trade?

Mr. WHITMAN: I object to that question on the ground it has been asked and answered already and the written instrument itself is the best evidence of what it contains or what the series of instruments contain.
The MASTER: You may answer.

A. Now if you will put that question.
(Question read.)
A. Well, we receive the open trades, trades closed out and re-margins called on trades that are opened.
Q. Well now, explain that. Take an open trade. What is on this statement as to an open trade besides the two items that I have mentioned? An open trade, I mean by that, is a trade that is just opened.

The MASTER: When you say this statement, you mean the statement received from the Hammond elevator?
Mr. ROBBINS: Yes.
The WITNESS: Yes.
Mr. WHITMAN: Well, I think the question ought to show it. The court and counsel may understand it.
The MASTER: Well, he says he does.
Mr. WHITMAN: Well, at that time the witness was attempting to answer a question he heard. I think it ought to be framed so as to show that.
116 The MASTER: I think he understands.
Mr. WHITMAN: I object to the question on the ground it does not appear what statement is referred to by the question.
The MASTER: I have already overruled the objection.

To which ruling the defendant excepted.

A. The question as regards what is on that statement?

Mr. ROBBINS: Oh, read it to the witness.
The MASTER: No.
The WITNESS: Well, that is what you said.

(Question read as follows: "What is on the statement received from the Hammond Elevator Company as to an open trade besides the two items that I have mentioned? An open trade, I mean by that, is a trade that is just opened.")

A. The number and the number of shares.

Q. That is all there is on that statement?

Mr. WHITMAN: I object on the ground it has been asked and answered already and the question is leading, and the statement is the best evidence.

The objection was overruled; to which ruling the defendant excepted.

A. That is all that would show on that statement, yes, on an open trade.

Q. Well, now, you says these statement also include closed trades? What would be shown as to a single closed trade on these statements besides the number of the trade and the number of shares or bushels dealt in?

Mr. WHITMAN: I object to that on the ground the statements are the best evidence of what they show.

The MASTER: I think that that line of examination is somewhat objectionable without having the papers. If you are going into that any further, Mr. Robbins, I think you had better have the papers here.

117 Q. Well, Mr. Battle, will you please produce a statement received by you from the Hammond Elevator Company at any time between the present date and January 1st, 1903, containing the three classes of trades that you refer to, and I will suspend with this witness until he gets that statement.

The MASTER: You mean the present date, Mr. Robbins?

Mr. ROBBINS: Yes, because I want a sample statement. I don't know how far back he keeps them. He may destroy them. When I get the statement I will ask him about them. I will suspend with this witness till we get the statement.

Mr. WHITMAN: I shall object to counsel going on with any other witness until he concludes with this one. Counsel has been all over this thing once before. He has had this witness in here before with the other case. He knows that I will object to his going on with this examination without the original exhibits. I made in the other case the same objection I make now, and he has no right to prepare his witnesses and case so carelessly as to be putting me in the position of trying the case half a witness at a time.

The objection was overruled. To which ruling the defendant excepted.

The MASTER: On what ground can you possibly except to that ruling?

Mr. WHITMAN: On the ground that except where there are reason-

able grounds for it, the rule is that a party has to put his witness on the stand, conclude his examination of him, and allow me to cross examine, and that you cannot arbitrarily put one witness on for five minutes and then take him away and put on another.

The MASTER: Are you aware you put Mr. Frank G. Williams on in exactly the same way.

Mr. WHITMAN: Very well and good and I had good reason to do so, and I did not break in on Mr. Williams' testimony to put
118 on other witnesses who would testify to similar questions. This proceeding now will enable counsel—and it is undoubtedly what it is aimed at—to have the testimony of this witness written up and take it to his office, and go over it with a fine tooth comb and come back with his further examination on the basis of that.

Recess until two o'clock p. m.

TWO O'CLOCK P. M.

Mr. WHITMAN: I object to Mr. Babb's being called until Mr. Battle is finished with, and I notify counsel that I shall object to Mr. Battle being recalled in event that Mr. Babb is put on the stand. Mr. Battle is in the room.

The MASTER: The objection is overruled.

To which ruling the defendant excepted.

A. H. BABB, a witness produced in behalf of the complainant having been first duly sworn, testified as follows:

Direct examination by Mr. ROBBINS:

Q. What is your name?

A. Albert H. Babb.

Q. Are you the Albert M. Babb upon whom a summons in this case was served?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

The MASTER: He may answer.

Mr. WHITMAN: That is practically the issue here as to whether this summons has been served or not.

The MASTER: Not as to whether it has been served on him. Whether it has been served on the Hammond Elevator Company or not.

119 Mr. WHITMAN: There was no service of that summons on him if he was not the agent. The question also assumes that it was served on anybody.

A. That is not my name.

Q. What?

A. That is not my name.

Q. That is not you? What is your name, Albert H. Babb?
A. Yes.
Q. This reads Albert H. Babb, is that you?
A. That is my name.
Mr. WHITMAN: And it is Albert N. Babb, there, is it not?
Mr. ROBBINS: No, it is evidently H.
(Question read as amended.)

A. Yes.
Q. Now what was your business on the 9th of July, 1903?
A. Broker.
Q. Where?
A. Peoria, Illinois.
Q. Did you have an office?
A. Yes, sir.
Q. How long had you been a broker and maintained an office at that place?
A. Ten years.
Q. Was there a telegraph wire running into that office on that day and for some time prior thereto?
A. Yes, sir.
Q. Did that wire have any connection with the defendant in this case?
A. The Hammond Elevator Company?
Q. Yes.
A. I believe so.
Q. Did it run from your office to the office of the Hammond Elevator Company in Hammond, Indiana?
A. I suppose it did.
Q. Did you on that date use that wire for the transmission of messages between your office and the office of the defendant in Hammond, Indiana?
A. If the wire was working and I had any business I presume I did.
Q. And this is true at least six months prior to that date?
A. July, do you mean?
120 Q. July, 1903?
A. Yes, sir.
Q. Do you know what telegraph company that wire belongs to?
A. The Western Union Telegraph Company.
Q. Who made the arrangements with the Western Union Telegraph Company for the furnishing of that wire, you or the Hammond Elevator Company?
A. I don't think either of them did that I remember. It was made ten years ago.
Q. Well, is it a wire for which the telegraph company receives pay?
A. I presume they do.
Q. In the way of rental?

A. I presume they get paid for it.
Q. Do you pay them anything for it?
A. I pay my share, what I am entitled to pay.
Q. You pay your share, but do you pay the Western Union Telegraph Company anything directly for it?
A. No, sir.
Q. Whom do you pay?
A. The Hammond Elevator Company I think.
Q. And the Hammond Elevator Company leases the wire from the Western Union Telegraph Company?

Mr. WHITMAN: I object to that as calling for a conclusion and not the best evidence, and leading.
The MASTER: He may answer if he knows.
To which ruling the defendant excepted.

A. I don't know what arrangements the Hammond Elevator Company makes nor whom they make them with.
Q. But whatever is paid for that wire to the Western Union Telegraph Company is paid by the Hammond Elevator Company, is it?

Mr. WHITMAN: I object to that as leading and calling for the conclusion of the witness, and it has been asked and answered before.
The MASTER: He may answer if he knows.

A. I don't know what the Hammond Elevator Company pays nor to whom they pay it.
Q. You only know that you pay nothing to the Western Union Telegraph Company for that wire?
121 A. That is the idea.
Q. Does the Hammond Elevator Company require you to pay anything to them on account of that wire?
A. I pay so much a month.
Q. You pay so much a month to the Hammond Elevator Company?
A. Yes, sir.
Q. Now what is that wire used for?
A. The transaction of business.
Q. Do you have a telegraph operator in your office?
A. Yes, sir.
Q. Is that what is generally known as a public wire or a private wire?

Mr. WHITMAN: I object to that as immaterial and irrelevant.
The MASTER: I hardly think it is admissible in that shape.

Q. Do you know of a distinction between public wires and private wires in the brokerage business?
A. In the brokerage business?

The MASTER: I think it is competent to ask him if that wire is open to the public for use?

Mr. ROBBINS: Well, I was going to ask him when I got this question answered. Read the question to him.
(Question read.)

A. I hardly know how to answer that. The brokerage business, it is strictly brokerage business, and the private wire, I don't know but the same.
Q. Do you know of such a thing as a private wire?
A. We have what they call a private wire.
Q. Now what are those wires?
A. Not used by the public.
Q. Not used by the public. Now is this wire of that character?
A. This wire is not used by the public.
Q. It is not used by the public. Between what hours in the day is it used by you with the Hammond Elevator Company?
A. Well, generally from half past eight, say, until two or three o'clock.
Q. And what are the market hours of the complainant?
A. The market hours——

122 Mr. WHITMAN: I object to that, your honor, What difference does it make what the market hours of the board of trade are unless it is to go into the question of whether the Hammond Elevator Company has got the board of trade quotations. It is wholly immaterial and irrelevant.
Mr. ROBBINS: The object is to show the course of business in detail.
Mr. WHITMAN: Do you realize that you asked the witness what the complainant's hours were?
Mr. ROBBINS: Yes, and if he doesn't know he won't answer it.
Mr. WHITMAN: That is what I object to.
Mr. ROBBINS: Well, he is an intelligent witness. He can say if he does not know. I am going to follow that if I can by showing what the market hours of the New York stock exchange are as preliminary to developing——
The MASTER: I think he may answer if he knows.
To which ruling the defendant excepted.

A. As I understand it the hours are from nine until two.
Q. The hours of what?
A. The stock exchange.
Q. No-, what are the hours of the board of trade?

To which question the defendant objected as incompetent, irrelevant and immaterial.
Which objection was overruled; to which ruling the defendant excepted.

A. 9.30 to 1.15.
Q. What days of the week do you have this wire?
A. Every day except Sundays and holidays.

Q. That is true between January 1, 1903 and July 9, 1903, is it not?

A. Yes. Now this is barring trouble, you know, in my opinion?

Q. Barring trouble from storm?

A. Any trouble that interferes with the wires.

123 Q. In my questions concerning the methods of business, you will please consider them as confined to a time between January 1, 1903 and July 10, 1903. During this period did people resort to your office to trade?

A. People came in there, and some of them trade and some of them do not.

Q. Daily?

A. I might say, yes, they come in when they like. They are not there every day all of them.

Q. Well, somebody comes in every day, do they not?

A. There are people in there every day.

Q. And you are making trades every day?

A. I do if I can get it.

Q. What?

A. I make the trades if I can get it. There are days when I have not done any trading.

Q. What?

A. There have been days when I have done no trade.

Q. When a customer comes into your office to make a trade what class of commodities is the trading done in?

A. Trade in stocks, grain, provisions mostly.

Q. I seek now to get the general course of your business, the method of your business.

Mr. WHITMAN: Is there any way in which I can object to these instructions, your honor?

Q. I will ask you what hap-ens when a customer of yours come-in to make a trade; what is the first step in the trade?

A. You mean if a man comes in and wants to make a trade?

Q. Yes, what is the first thing he wants done?

A. He comes and tells me what he wants to do.

Q. Does he do it by a written order?

A. Not often generally.

Q. Well, then, what does he tell you?

A. Buy or sell.

Q. Does he name the stock or the grain that he wants bought or sold?

A. Yes, sir.

124 Q. Does he give the stock?

A. If he wants to limit the order he does.

Q. If he does not limit the article, what is meant?

A. Buy it at the market.

Q. It means buy at the market. Now what is the next step in that trade?

A. He gives me that order to send it over the wire.
Q. Now how do you send it?
A. By telegram.
Q. Do you personally operate?
A. I am an operator, yes, sir.
Q. You send the orders yourself?
A. I generally send them myself. Sometimes my operator does but I do the majority of it.
Q. Well, now what kind of a telegram do you send in order to——
A. "Buy me."
Q. Take some particular commodity and give a example of the telegram you would send?
A. For instance 5000 December wheat I would say "Buy me 5000 December wheat" at a given price or at the market whatever the customer wants.
Q. Do you say 'buy' or 'buy me' in the telegram?
A. Generally say 'buy.'
Q. "Buy 5000 December wheat" what else?
A. The price.
Q. Naming the price?
A. Or at the market, you know.
Q. Now what else?
A. I don't know that there is anything else to it.
Q. Is there a number of the trade mentioned?
A. Oh, yes, a number of the trade.
Q. You give the trade and the number as soon as you receive the order, do you?
A. I will give you a copy and you can see what it is. That is for instance, "No. 1 buy 5000 May wheat at the market."
Q. Now what does No. 1 mean?
A. That is the number of the trade.
Q. And you fix that number for the trade when you get the order from the customer?
A. Yes, sir.
125 Q. Now what next happens in your office in connection with that?
A. I wait until I get an answer.
Q. Well, when the answer comes back how does that read?
A. The answer to that message would be, "Bought 5000 wheat" certain price.
Q. Giving the price?
A. Yes, sir.
Q. Does it also give the number of the trade?
A. The number is the first thing they send.
Q. What?
A. Number I bought.
Q. So that the number of the trade is given in the telegram that you send and the telegram comes back?

A. Yes sir.
Q. When do you notify the customer anything about this trade?
A. If he is there I notify him at once.
Q. At once. What do you mean by at once. Do you notify him before you get the written message or after?
A. No, sir, how could I notify him when I don't know if I will get it or not?
Q. When the telegram comes back then you notify him, do you?
A. Yes, sir.
Q. How?
A. Tell him he gets the wheat. You are speaking about a certain trade now.
Q. You have not said anything about the putting up of any money by way of margins when the order is due. Explain that?
A. You don't have to say anything to them about money. They know they have to put it up.
Q. They know it. Do they put it up at the time the order is given?
A. Some of them do and some of them do not.
Q. Under what circumstances do the people not put it up?
A. I have people down there that trade with me, and when I want any money I go and get it.
Q. People whose credit you are satisfied of?
126 A. Who are good people, and when I want my money I can get it, when it is coming. When I want it I can get it. People I have confidence in.
Q. Well now, what is the next step in that trade?
A. Nothing more to the trade that I know of.
Q. The trade might go against the customer, might it not.
A. Yes, sir.
Q. Requiring more margins?
A. Yes.
Q. In that event, what would be the next step?
A. If I am carrying good customers, why when I want money, as I tell you, I go and ask for the money.
Q. Well, assuming that you are not carrying a customer, but you have a customer to whom you accord no credit. What do you do?
A. Require more margins.
Q. Call on him for more margins?
A. Yes.
Q. Well, what happens then if he puts up the margins?
A. That is all there is to it.
Q. What if he don't put up the margins?
A. I have to close him out.
Q. Now explain how you do that?
A. Send an order.
Q. Send the same kind of an order?
A. Close the trade.
Q. Close the trade? The same kind——

A. To sell five—"Sell 5 wheat to close out such a trade."
Q. Giving the number of the trade?
A. Yes.
Q. That goes over your wire to the Hammond Elevator Company?
A. Yes.
Q. Then what is the next step? Do you get any telegram back?
A. I do when it is closed out.
Q. How does that telegram read?
A. "Sold wheat to close such a trade."
Q. Giving the quantity sold, 5000 December wheat to close trade No. 1, is that right?
A. Yes.
127 Q. What is next? Do you notify your customer?
A. Why yes, notify him or he knows it. If he don't put up his money he knows he will be closed out. I tell him where he is closed.
Q. Now what is the commission on a trade of 5000 bushels of wheat?
A. One eighth of one per cent.
Q. And how much would that be in plain dollars and cents?
A. On 5000 $6.25.
Q. It is one eighth of one cent a bushel, instead of one eighth of one per cent., is it?
A. One eighth of one per cent. is not that right?
Q. One eighth of one cent a bushel. Well, never mind that.
A. I gave you the price.
Q. How much of that do you get?
A. I get it all.
Q. I mean finally?

Mr. WHITMAN: I object to that, your honor. The question is not only leading but misleading. It calls for the conclusion of the witness and his deduction, and that has been answered already.

The MASTER: Ask him what he does with it.

Mr. ROBBINS: That would lead to a protracted investigation of what he does with the money. I want to find out the amount he finally retains out of that transaction.

Mr. WHITMAN: He has told you he retained it all.

Mr. ROBBINS: No, he has not. I don't think he means to say that.

The MASTER: I don't think the question is competent as it stands.

Q. How much of that $6.25 do you finally retain for yourself?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness, as leading and misleading, assuming a fact that he divides that specific ⅛ of one per cent. or disposes of it as such in any way shape or manner.

The MASTER: I think the objection is well taken.

Q. Do you pay out to the Hammond Elevator Company any part of that $6.25?

Mr. WHITMAN: I object to that as leading and calling for the conclusion of the witness.

The MASTER: I think he may answer that.

Mr. WHITMAN: I am perfectly well aware that the court assumes this man takes the stand in a frame of mind antagonistic to the counsel, but the court ought to be guarded against that, because on the state of the record it is wholly unwarranted.

The MASTER: I think that as I understand it, the question that we are investigating now is the relation between this witness and the Hammond Elevator Company.

Mr. WHITMAN: That is very true.

The MASTER: Now it seems to me that question is entirely pertinent to that issue.

Mr. WHITMAN: I think it is too, but I think it is leading.

The MASTER: Let him put in "what if any" then. That is perhaps better.

Mr. WHITMAN: I still object to it.

(Question read as amended.)

The MASTER: I think that question is proper.

A. I do not.

Q. Do you pay to the Hammond Elevator Company anything on account of that trade?

A. No, sir.

Q. Do you pay to the Hammond Elevator Company anything based on that 5000 bushels?

Mr. WHITMAN: I object to that question as vague and uncertain and calling for the conclusion of the witness, and as leading.

The MASTER: I think it is calling for a conclusion.

Mr. WHITMAN: It is the very struggle of counsel to get this witness to characterize this transaction with the Hammond Elevator Company. That is his purpose in each successive question. He is not satisfied to state the facts. He wants to get an opinion from this witness.

129 The MASTER: The objection is sustained.

Q. Does that 5000 bushels of wheat enter into any computation that is entered upon by you or by the Hammond Elevator Company to ascertain the amount of money that you should pay to them?

Mr. WHITMAN: I object to that on the same ground as I objected to the former question.

The MASTER: I think he may answer.

To which ruling the defendant excepted.

(Question read.)

Mr. WHITMAN: If your honor will permit me, I would like to make this additional objection. It does not yet appear that this witness pays anything to the Hammond Elevator Company, except in the other case.

The MASTER: If he does not he can say so.

The WITNESS: I pay the Hammond Elevator Company nothing out of that commission of $6.25.

Mr. ROBBINS: Read the question.

Mr. WEITMAN: I object to the question being read. He answered it.

The MASTER: No, he has not answered the question.

(Question read.)

A. I think I have answered that. I pay them nothing out of that commission, that $6.25.

Mr. ROBBINS: Now I ask the witness be instructed to answer the question.

The WITNESS: I don't know, sir, how I can answer it any more plainly.

The MASTER: I think that you can get at that a better way by asking him what he does pay to the Hammond Elevator Company and how that amount is arrived at.

Q. What do you pay to the Hammond Elevator Company?

A. I pay for that wire, for the use of the wire.

Q. Well, what do you pay?

130 A. Out of that commission?

Q. Oh, what do you pay to the Hammond Elevator Company? Anything?

A. Pay them 50 dollars a month for the use of the wire.

Q. What else do you pay?

A. On grain, on stocks?

Q. On anything?

A. 50 cents on 10 shares of stock $5 on 100.

Q. What do you pay on grain?

A. Nothing.

Q. You take orders in stocks from your customers too?

A. Yes.

Q. You send them over the wire in the same way?

A. Yes sir.

Q. As you testified as to grain?

A. Yes.

Q. You get the orders back the same way?

A. Yes, sir.

Q. The trade is given a number in both telegrams?

A. Yes, sir.

Q. And you report it to the customer the same way?

A. Yes, sir.

Q. Now on what amount do those trades for stocks run?

A. From 10 shares up.

Q. Is your trade mostly in stocks or mostly in grain?

A. Lately it has been more in stock.

Q. What is the percentage of your stock trading?

A. I could not tell you, I have never noticed.

Q. Well, your best estimate?
A. Well, it varies. Some months more and some months less.
Q. Well, what does it do during the month of June, we will say.
A. I could not tell you.
Q. What did it do for the last month?
A. I could not tell you.
Q. Cannot you give the court any idea of the proportion of the stock trades to grain trades?
A. I don't know as I could. I presume last month was more grain than there was stock.
Q. If the order was given to you to buy 100 shares of Rock Island stock, what would be the commission that your customer would pay on that?
A. 100 shares.
Q. Yes?
A. $25.
Q. Now does that 100 shares of stock enter into any computation that is made to ascertain what you owe or should pay the
131 Hammond Elevator Company?
A. Margins or commissions?
Q. Commissions, anyway.
A. The Hammond Elevator Company gets $5 on that 100 shares.
Q. That is to say they get an amount equal to 1/5 of what the commission is?
A. $5 on 100 shares.
Q. And the amount you pay them is based upon the number of shares always, is it?
A. As I told you 50 cents on 10 shares, $1 on 20 shares, $5 on 100 shares.
Q. Have you any understanding with the Hammond Elevator Company about margins on trades?
A. In what way?
Q. Well, as to amount of margin that is up on each trade that you send to them?
A. I have to put up margins on every trade that I send them.
Q. Well, is there an agreed amount for each trade?
A. They require 2 per cent. on stocks and one on grain.
Q. And you keep a balance with them, do you?
A. Get a statement every morning.
Q. I asked you if you keep a balance with them?
A. Do I have a balance in money? Have it all the time.
Q. You get a statement every morning? What kind of a statement is that?
A. It is a record of the business that I have done the day before.
Q. A record of the orders sent over this wire the day before?
A. Yes, sir.
Q. Now whom does that statement come from?
A. The Hammond Elevator Company.

Q. It eminates from them and comes through the mail to you?
A. Yes.
Q. Now what does the statement give?

Mr. WHITMAN: I object on the ground the statement is the best evidence.

The MASTER: I think he may state without giving figures.
132 To which ruling the defendant excepted.

A. It contains the statement of the business that I did the day before.
Q. It gives all the trades for which telegrams have passed from you to the Hammond Elevator Company and which have been executed the day before?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness, calling for a statement of a written instrument, not the best evidence.
The MASTER: The objection is overruled.

A. It gives an account of all the business that I did, transacted with the Hammond Elevator Company the day before.
Q. Well, now how does it do it?

Mr. WHITMAN: I object to that as calling for a conclusion of the witness, and not the best evidence either of a particular instrument or a series of instruments.
The objection was overruled; to which ruling the defendant excepted.

A. It tells what I have bought as new business; what I have closed out as old business; or margins, if any.
Q. Does it give each trade by itself?
A. Yes, each trade by itself.
Q. Does it give the number of each trade?
A. It gives the number, yes.
Q. Each trade appears on the statement by its number?
A. Yes.
Q. And that is the same number you gave to it when you sent the opening telegram?
A. Yes.
Q. And that number continues right through the trade until it is finished?
A. Yes, sir.
Q. And figures entirely in the statements that pass between you and the Hammond Elevator Company?
133 A. Yes, for instance that No. 1 that appeared bought so and so. When it was closed out, it gives that number that trade closed.
Q. The trade is known by that number from start to finish?
A. Yes.
Q. And it is entered on the books by that number?

A. It is entered on the sheet.

Q. It is entered on the books of the Hammond Elevator *Elevator* Company by that number?

Mr. WHITMAN: I object.

A. I don't know anything about the Hammond Elevator Company, how they do.

Q. What else is given but the number on these statements?

Mr. WHITMAN: I object on the ground it calls for a written instrument, and that the statement or series of statements, one of the statements is the best evidence.

The MASTER: He may answer.

To which ruling the defendant excepted.

A. I don't know what more I can say. I have given you the order as I sent it, as they repeat it, and I don't know what else.

Q. I am talking about what else appears on these statements that you received besides the number of each trade, Is the quantity of each trade mentioned on the sheet?

Mr. WHITMAN: I object to that as leading.

The MASTER: He may answer.

To which ruling the defendant excepted.

A. Why I can give—for instance take this No. 1 I gave the whole business right straight through.

Q. Now you are stating what appeared on one of these statements?

A. Yes, I say I mean No. 1. Let me see. No. 1 the amount required in the margin.

Q. How much was it in No. 1, 5000 bushels?

A. That would be $50. Now you want to get at the time it was closed.

134 Q. Is that all that will appear on the statement. Just the number of the trade?

A. The number of the trade, $50.

Q. And $50, which is the margin set aside for that particular trade?

A. Yes, sir.

Q. By the Hammond Elevator Company?

A. That is the margin that they charge me up with. I have to put up that amount of money for that particular trade.

Q. That is all that appears on the statement so far as that trade is concerned before it is closed?

A. Unless it requires a remargin.

Q. Well, in case a remargin is required, how does that No. 1 appear on the next day's statement?

A. If it required a remargin next day's statement "1, 50 dollars"

Q. Under what heading?

—. "Remargins" I think it reads.

Q. Now is that all that would appear on the statements up to the time that trade was closed up?

Mr. WHITMAN: I object to that as not the best evidence.
The MASTER: He may answer.

A. Remargins.
Q. Yes, well after that. Is that all?

Mr. WHITMAN: I think your honor, that it is perfectly absurd to take up this record and the time of counsel and the court in drawing out from this witness the contents of a written instrument.
The MASTER: As I said before in the other case, I think it is admissible to show a general custom, but I am inclined to think it is going pretty far to go into details of this sort without at least a specimen sheet here.
Mr. ROBBINS: I don't know how to establish the course of business without taking up a particular trade and following it up from start to finish, and I shall of course follow that up by asking if that particular trade is representative of the kind of business that is done. I know of no other way to do it.
135 The MASTER: Well, you can go ahead. It is kind of a hypothetical question, I suppose.
(Question read.)

A. That is all that appears on the statement when it requires a remargin. If I bought it and it keeps going down, when it touches that price to eat up the margin, they call on me for another one.
Q. Well, suppose you or the customer ordered the trade closed out and you sent the telegram ordering it closed in the way you have already explained, how does that trade appear upon the statement of the next day?
A. No. 1?

Mr. WHITMAN: I object to the question on the ground it assumes that the orders to close out are or may be sent to the Hammond Elevator Company by the witness' customers, which does not appear in the record, and on the ground that the question is therefore misleading. It does not appear that the customer has anything on earth to do with the Hammond Elevator Company.
The MASTER: The question is if he sends a telegram ordering a trade be closed. I think that is competent.
Mr. BROWN: Then your honor ought to strike out 'the customer' in that question.
The MASTER: I think it is surplusage.
Mr. BROWN: Now I move to strike it out.
Mr. ROBBINS: No, it is not surplusage. The witness has already testified about the closing of these trades. They are closed in two ways; either for want of margin, in which event he sends a telegram, or they are closed because the customer wants them. And then the customer gives him the order and he sends — in.

The MASTER: I think the question is competent.
(Question read.)

A. "No. 1 closed" at a certain price, speaking of this same trade No. 1.

Q. What else appears on it?

136 A. The amount of margins that was up, the amount of money that would be returned.

Q. How is the amount of money to be returned ascertained?

A. If it closed at a profit the profit would be added to the amount of money up on margins. If it was a loss, it would be a deduction from that amount of margin.

Q. Now would all the trades that were closed that day appear separately in the manner in which you have defined in the statement that you would receive the next morning?

A. Yes, sir, every trade is separate, each one by itself. If I made ten trades it would be ten distinct trades, closed out the ten trades would be separate and distinct.

Q. And is the amount that is coming to you in those trades totaled in the statement?

A. 5000 bushels with a quarter of a cent profit would be $12.50. That would be added to the amount of margins up on that trade, $50 up, $62.50 then in return.

Q. I say, as to the particular trade, but I ask whether such amounts as to all the trades are added up in the statement so as to show the total amount due you?

Mr. WHITMAN: I object to that as calling for the contents of a written instrument.

The MASTER: Let him answer.

A. I don't know as I—each trade is separate, and then you mean at the bottom is it added up?

Q. Yes?

A. Yes, sir.

Q. Showing the amount coming to you on all the trades on that sheet that have been closed the day before?

A. The trades are filled up, debtor, credit, creditor, debtor.

Q. Now what else is there on that sheet?

A. There is nothing but the business that I transacted.

137 Q. Is there any amount that represents the $5 per 100 shares that you allow them?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness and not the best evidence.

The MASTER: He may answer.

To which ruling the defendant excepted.

A. They charge me up with that amount $5.00 on 100 shares.

Q. And the amount is ascertained by figuring the total number of shares of stock covered by the closed transactions on that sheet, is that right?

Mr. WHITMAN: I object to that as leading and calling for the conclusion of the witness, and on the ground it has been asked and answered before and is not the best evidence.

The MASTER: I think the objection is well taken.

Q. How is this amount ascertained on that sheet?

To which question the defendant objected, which objection was overruled; to which ruling the defendant excepted.

A. Why I have explained to you that they charge me $5 for 100 shares of stock. They charged me up with that $5 when the trade is closed up.

Q. So that if there are ten orders—trades of 100 shares each, they would figure against you how much?

A. $50. $5 on a hundred.

Q. So that amount is ascertained by ascertaining the total amount of shares in that statement?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

The MASTER: Let him answer.

To which ruling the defendant excepted.

Mr. WHITMAN: The question itself is argumentative. In itself a deduction from what the witness testified.

138 A. I am trying to answer these the best I can and explain it to you thoroughly if you will let me. It is $5 a 100. If it is 1000 shares it is $50.

The MASTER: I think that is plain enough, Mr. Robbins.

Q. And that is on the debtor side, is it?

A. Anything they charge me up with is on the debtor side.

Q. What else is on the debtor side?

A. What I owe the Central Stock & Grain Exchange.

Q. What actual items appear upon the debtor side of these statements besides this $5, 100 shares of stock?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness, the opinion of the witness, having been asked and answered before and not the best evidence.

The MASTER: Let him answer.

A. If I make a trade with the Hammond Elevator Company they charge me up $50, 5000 bushels of grain. If that trade should require a remargin, they charge me up with that remargin. If I close out 100 shares of stock they charge me up with $5 on that 100 shares of stock.

Q. They charge you up those items when the trade is opened, do they not?

A. New trades. When I make a new trade I have to put up this $50.

Q. So that the day after you send an order to open a trade, that trade appears on one of these statements on the debtor side?

A. If I make a trade to-day, tomorrow morning I get a statement debtor so much.

Q. And that is the amount of margin that you have already explained as to the particular trade?

A. On this one trade, yes.

Q. Now all the trades of that day appear in the same way, do they not, on that sheet?

Mr. WHITMAN: I object on the ground that it has been asked and answered and is not the best evidence.

139 The MASTER: Let him answer.

To which ruling the defendant excepted.

A. Each trade appears on the statement. Each trade is separate.

Q. Well, aren't there two kinds of trades, closed trades and trades that are open on the statement of each day?

A. I have explained that. I make a new trade and it appears to-day. If I do no- close it out for six months I hear nothing from that trade for six months, unless it requires a remargin

Q. You have explained the way the trades that are closed appear on the statement, and also the way the trades that are open appear on that statement. Now they don't appear in the same column of that statement, do they?

A. I don't know how I am going to answer you any more plain than I have. A new trade appears on the statement next morning.

Q. Well, where does it appear on the statement. Does it appear with the trades that are closed, or the other side of the statement?

A. Oh, one statement, the one statement.

Q. Well, on which side of the statement do they appear?

Mr. WHITMAN: I object on the ground the statement is the best evidence.

The MASTER: I think you had better get hold of one of those statements, Mr. Robbins.

Q. Have you got a statement?

A. I have not.

Q. Well, when you come again will you bring one with you?

A. I will if I can.

The MASTER: I have very serious doubts whether it is competent. I have let a lot of it go on simply because it was inconvenient to get hold of the statement.

Mr. WHITMAN: Why on earth they did not subpœna these men to bring in these statements, heaven only knows.

Q. See if that refreshes your recollection, Mr. Babb.

140 Mr. WHITMAN: I object to the paper being exhibited until I have an opportunity to interpose my objection and get a ruling.

Mr. ROBBINS: You have had a ruling on that.

Mr. WHITMAN: I will take another. Go ahead and tell the court what you propose to do and let me object to it.

Mr. ROBBINS: I propose to see whether this paper refreshes the witness' recollection so he can answer the question I put to him.

Mr. WHITMAN: Now what paper are you referring to?

Mr. ROBBINS: Complainant's Exhibit 2, in case No. 26,588.

Mr. WHITMAN: I object to the paper being exhibited to the witness on the ground that it appears on its face to be a paper between the Central Grain & Stock Exchange of Hammond and Battle & Dickes of Aurora, Illinois, and on its face covering transactions transpiring on November 15, 1902, that it is not a memorandum, made by this witness, or a part of his records or his business, and no proper foundation has been laid, and that it cannot be used for that purpose.

The MASTER: I think you may show it to the witness.

To which ruling the defendant excepted.

Q. Look at that paper Mr. Babb.

Mr. WHITMAN: I object to the witness examining the paper on the grounds I have stated.

Mr. ROBBINS: How many times do you have to object?

Mr. WHITMAN: Because as a matter of fact when I make an objection and it is overruled and in pursuance of another question you proceed to do what you have no right to do, I use my record.

Q. Does that statement refresh your recollection so that you are able to state whether the trades appearing on these statements that have been closed are in the same column with the trades that appear on this statement that are open?

Mr. WHITMAN: I object to that as leading and suggestive
141 and on the ground that the instrument exhibited to the witness is not properly shown to him for the purpose of refreshing his recollection; that it is not a memorandum or does not purport to be a memorandum of any transactions to which he or the defendant company were party or knew anything about; that it appears on its face to cover transactions that transpired before the period to which counsel's interrogations have been expressly limited, that is, before January 1903. And that no proper foundation has been laid for the use of the instrument.

The MASTER: The objection is overruled.

(Question read.)

A. The new trades appear in this colums (indicating) the trades that are closed out appear in this column.

The MASTER: Now, state that so the reporter can get it down.

Q. Say the right hand and left hand.

A. They debit me on the right hand side; they credit me on the left hand side.

Q. Well, the statements that are open that day appear upon the——

A. Right hand side.

Q. Right hand half of the sheet? Is that right?

A. Yes, sir.

Q. And the closed trades on that day appear on the left hand side of the sheet?

A. Yes, sir.

Q. And where does this figuring of the $5 per hundred shares of stock figure?

A. On the right hand side, on the extreme right.

A. As a debtor on the right hand side?

A. Yes, sir.

Q. Mr. Babb, will you furnish to the master, to be used as an exhibit to your testimony a sample statement such as you received daily from the Hammond Elevator Company and have received during the period we are inquiring about?

Mr. WHITMAN: If the question conveys any idea that I am bound by any such attempt to furnish the court with such a state-
142 ment or that I shall consent to the court considering such an instrument or assent to which characterization as a sample copy, I object very strenuously.

The MASTER: I do not understand there is any objection to be ruled on until the paper is produced.

A. I do not know that I can.

Q. Are you receiving these statements every day?

A. Every day that I do business.

Q. How long do you keep them?

A. Sometimes I keep them several days; sometimes have had them a full month.

Q. Have you the statements that you received prior to July 9, 1903?

A. No, sir.

Q. Are the statements that you have received since that time of the same character as those you received before that time?

A. Yes.

Q. Now, how far back do these statements go now?

A. That I have got?

Q. That you have?

A. I could not say there are any more at all; probably not before the first of the month, anyway.

Q. Will you produce to the master one of the statements you now have?

A. That is pretty expensive, going down to Peoria and coming back up here to bring up one of these papers.

Q. Well, if you will send it up to the master we may avoid you coming back.

Mr. WHITMAN: Then if that is all you are asking the witness to say you have no right to take up further time of this court and counsel with an inquiry of that kind.

A. I have no objection to the statements coming in here if I have them, but I have not been in the habit of keeping them; I have no use for them after I check them up.

Q. Well, you get them every day?

A. Yes.

Q. The statement of to-day will sooner or later be of no value to you in your business?

143 A. Probably half an hour after I get it it will be of no value to me.

Q. Well, then, you can send up one of the statements you get.

Mr. WHITMAN: I object as incompetent, irrelevant and immaterial, cross examination of his own witness and an attempt to discredit this witness to the court upon the discovery that his testimony is not favorable to the complainant.

A. Why, yes, I can send you, but I cannot tell you what date it will be, it will be a late date, it might be to-day's.

Q. Yes, I don't care.

A. Well, then if you don't care.

Q. And perhaps counsel will then agree it may then go in, otherwise you will have to come back and testify.

A. All I will do is to send one of my statements to the master.

Q. Mail one of your statements to the master?

Mr. WHITMAN: I advise counsel right now that if he wants to get that thing into the record so it will stick here he had better get his witness back because I won't agree to anything. I am just serving him with notice as we go along that I won't do it, and he might as well arrange to subpœna him.

Mr. ROBBINS: I move the witness be directed to produce here all the statements he has.

Mr. WHITMAN: I never heard that a court could direct a witness to appear here without having his witness fees.

The MASTER: Well, I can direct the witness to come back.

Mr. WHITMAN: I have no objection to that, your honor. I am in the same position I was when they ordered Southard in. I do not represent the witness.

The MASTER: I can direct the witness to come without witness fees, I presume.

Mr. WHITMAN: Yes and to sleep here to-night, I suppose, I don't care.

The WITNESS: When do you want him to come here, Mr. Robbins?

Mr. ROBBINS: Whenever we adjourn to. Will you direct him to produce all the statements?

144 The MASTER: Yes, the witness is directed——

The WITNESS: Have I got to go down there and come back at my own expense?

Q. Can you have it sent up here by telegram?

A. I don't know that it is there.

Q. When these statements show a credit how does that figure in account with the Hammond Elevator Company a credit to you?

A. The credit is on the left hand side of the blank of the sheet. Each trade by itself is divided up and the total credit for that day. Is that what you mean?

Q. Yes?

A. The debtor the same on the right hand side.

Q. And the result of the statement is a net debtor or creditor to you as in your transactions with the Hammond Elevator Company, is that right?

A. Yes.

Q. Well, now how is that debtor or creditor paid?

A. Settled, you mean?

Q. Paid. How does the money pass?

A. Through the bank.

Q. Through what bank?

A. I do my business through the Commercial National Bank of Peoria.

Q. How do you settle through that bank with the Hammond Elevator Company?

A. If I am debtor to the Hammond Elevator Company—I might say this way, I don't settle every day with the Hammond Elevator Company, I have done business with them for a good many years. They don't ask me for money, I know when to send it. They are not afraid of me. If they owe me money when I want it I tell them to send me a check.

Mr. WHITMAN: I move to strike out the answer of the witness, the whole answer, on the ground that it is not responsive to the question, and to strike out the statement that he has done business with the Hammond Elevator Company for years, that he doesn't have to ask them for money and they don't have to ask him for money and he knows how to remit, as not responsive to the question

145 and immaterial and irrelevant.

The objection was overruled. To which ruling the defendant excepted.

Q. Now, proceed.

A. Well, all I was getting at that I didn't deposit every day if I owed them a little money. They don't send me a check every day when they owe me money. My credit is good there and their credit is good with me. If I owe them money to any extent then I deposit it, but if they owe me $10, $15 or $25, they don't send me a check for it, if I owe them $10, $15 or $25 I don't go down there

and send them the money, but if it gets to any amount why I deposit it.

Q. Where?

A. The Commercial national bank.

Q. The Commercial national bank. To whose credit?

A. The First National Bank of Hammond, Indiana.

Q. You deposit in the Commercial national bank to the credit of the First national bank?

A. Of Hammond, Indiana.

Q. How long have you deposited to the credit of the First National Bank of Hammond, Indiana?

A. I cannot tell. It may be a month or two or three months.

Q. To whose credit did you deposit before that?

A. The Hammond Elevator Company.

Q. Do you remember when that change was made?

A. No, I do not.

Q. It might be a month or so?

A. Yes.

Q. Or two months?

A. A month or two or three months; I do not remember.

Q. Well, before this change, how did you get the money to the Hammond Elevator Company?

Mr. WHITMAN: I object to that as immaterial. The issues in this case are how things were on July 8th and 9th. I do not think
146 how this man banked with the Hammond Elevator Company prior to that time has any bearing on the question.

The MASTER: I think the inquiry should be confined to the time between January 1903 and July 9th, 1903.

Mr. WHITMAN: The question does confine it to that. I am objecting to an inquiry in view of what the witness has stated, to an inquiry regarding conditions antedating this service. The question is, as to conditions at the time of this service.

The MASTER: Well, I presume at the time of this service he was not actually making a deposit at all. I think he may answer.

A. I am supposed to deposit every day if I owe them any money. I am supposed to get a check the next day for any money they owe me, but it is so small an amount why I let it run along until it is larger. I may stand debtor or I may stand creditor for several days. When it gets to any amount I deposit it.

Q. When you are in debt either the same day that you get the statement or a few days after you make a deposit?

A. Yes.

Q. Now, with whom did you make that deposit prior to July 10, 1903?

147 A. The Hammond Elevator Company.

Q. What bank did you make the deposit in?

A. The Commercial National Bank of Peoria.

Q. And how long before July 10, 1903, had you been depositing that way to the credit of the Hammond Elevator Company?

A. I have deposited to the Commercial national bank ever since that has been or to the Hammond Elevator Company since they have been in existence.

Q. Now, when this statement showed a credit to you instead of a debt from you how was the money passed between you?

A. I received a check.

Q. A check came with the statement? *Q. A check came with the statement?*

A. Yes, sir.

Q. And on whom was the check drawn?

A. Sometimes on the Commercial National Bank of Peoria if they had credit there, if not it would be on some Chicago bank.

Q. As a rule, whenever you get a statement showing a credit to you, a check accompanies said statement, does it not?

A. Not always, no.

Q. Well generally.

A. Only when it gets to a considerable amount and I need the money. We don't exchange checks every day for small amounts.

Q. Well, do checks you receive on certain days include exactly the amount of credit of the days that have preceded that since the last check you received?

A. I don't know as they always do; if they do not, sometimes I say "Send me a check for $1,000." If I have got a couple of thousand dollars may be or more, $2,000 or a little more, I would say, "Send me a check to night for a couple of thousand." If I just say "Send a check," then they will figure it up to the amount to a cent that is due me, but if I state a certain amount they will send it, that is if that amount is due me. We are supposed to settle every
148 night. It may be a credit to-day and may be a debit to-morrow. That will necessitate a check each way.

Q. When the money comes from your clients—the *the* customers, on these trades—to whom does it come?

A. It comes to me.

Q. And what is done to it?

A. I put it in my pocket, or if it is any amount I put it in the bank.

Q. What bank?

A. The Commercial National Bank of Peoria.

Q. The same bank?

A. The Commercial National Bank of Peoria to my own credit.

Q. And in case of remargins that is also true, is it?

A. Yes, sir.

Q. In case of—when a trade is made upon the order of a customer and is closed out upon his order by another telegram, is there any statement rendered by you to the customer showing the result of the transaction.

A. Oh, I just generally take a slip of paper and give the price bought, the price closed out and the profit or loss.

Q. And what is done with the profit or loss?

A. Well, I give him what money is due him.

Q. You give him a check for his credit?

A. A check or currency.

Q. When do you do that with respect to the closing order?

A. It depends on the customer.

Q. Well, do you ever do it at the time the closing order is given to you?

A. If you should come into my office to make a trade, I should require you to put up a margin because you would be a stranger to me, and as soon as you closed that trade out, you come in the same day or the next day and close that trade out, I hand you your money. If I have not got it in my pocket and you want currency I send and get it, if you want a check I give you a check.

Q. That I understand; but when with reference to the time I give you the order to close out do you pay the money?

A. When I get an answer from the message that it is closed out.

149 Q. You never give the money before you get the message back from Hammond?

A. No, sir.

Q. You have the quotations on stock posted in your office all the time, do you not?

A. The majority of them, a good many of them.

Q. When you have these quotations posted in your office do you ever close a trade with your customer as soon as he gives you an order and before the telegram is sent to Hammond?

A. Never in the world.

Q. What?

A. Never.

Q. Then the closing of the trade is dependent upon the result of a telegram from the Hammond Elevator Company?

A. Yes, sir.

Mr. WHITMAN: I object to that as calling for the conclusion of the witness and move to strike out the answer.

The MASTER: It may stand.

To which ruling the defendant objected.

Q. I would like to get an idea of the extent of your business.

A. Well, it has not been very extensive lately, I can tell you that.

Q. Well, I am speaking of the time between January 1st and July 10, 1902?

A. I could not give you any idea because I do not remember.

Q. Oh, yes, you could give us some idea.

A. No, I do not think I could.

Q. Well, give us your best estimate of the largest number of orders you received on any day during that period.

Mr. WHITMAN: I object to that as immaterial and irrelevant absolutely nothing to do with the issues in this case.

The MASTER: He may answer.

To which ruling the defendant excepted.

A. As I say, I cannot give you an estimate of how much business I did at that time.

Mr. WHITMAN: I will offer this stipulation of counsel that
150 he does one million dollars a day, or that he only does one dollar's worth a day, or I will agree that he may argue whatever he decides (upon the argument of the case) as most advantageous to his cause, without any further testimony. I think in the face of this stipulation it will be immaterial.

Q. Give us your best estimate of the business for any one day during that period?

Mr. WHITMAN: Same objection, as immaterial and irrelevant.

The MASTER: Answer it if you can.

A. I cannot answer it.

Q. Well, you can give some estimate, can't you?

Mr. WHITMAN: I object to the question; it is in the nature of cross examining the counsel's own witness.

Mr. ROBBINS: It seems to be necessary.

Mr. WHITMAN: You ought to coach him better before you put him on the stand.

The objection was overruled. To which ruling the defendant excepted.

A. When I get through with the day's business I don't pay any more attention; I cannot remember that; I cannot tell you one of those months how much I done or how little; there are days when I have done nothing; there have been days when I have done more, when I have done considerable.

Q. What do you mean by considerable?

A. Well, I should think if I had 20,000 or 30,000 bushels of grain a day I would be doing pretty well.

Q. And how about stocks?

A. Well, very bad market for stocks lately.

Q. I am not talking about the market now; I am talking about the market from January to July.

A. Between January and July I don't remember whether that was a very dull time or a fai-ly good time.

151 Q. Well, give us the best estimate you can upon the average daily business of that period.

To which question the defendant objected as incompetent, immaterial and irrelevant. Which objection was overruled.

A. I would like to give you an average if I could. There is nothing to conceal why I should not.

Mr. WHITMAN: I never saw a man who wanted to get up in court and tell the whole general public what his income was. I offer here to give counsel any stipulation of anything he can hope to prove on the subject and it is so apparent that it cannot help out counsel's claim on this reference I do not think we ought to have any time wasted.

Q. Could you give an answer by referring to your books?
A. I do not keep books.

Mr. WHITMAN: I object to that.

Q. You don't keep any books?
A. I just keep a memorandum book. You smile. I presume you think it funny. But that is right.

Mr. WHITMAN: Mr. Battle, why are you waiting around here?
Mr. BATTLE: I would like to say to the master that Mr. Dickes and myself are both here and our business has been neglected and it seems to me I am ready to go on the stand at any time and I know he is, but it is like this, if I could have been excused and gone home, I could have attended to the business.
The MASTER: You did not ask to be excused, I did not hear you.
Mr. BATTLE: Yes, I asked when I got through here if I was done for the day and he gave me no reply at all.
Mr. ROBBINS: Asked me?
Mr. BATTLE: I did, I asked you right here.
Mr. ROBBINS: I didn't hear you. I supposed you understood you were to get these statements before you went on the stand again.
152 Mr. WHITMAN: Take a man, subpœna him in here, I suppose any witness in the world would take it for granted——
The MASTER: Now, Mr. Whitman, do you represent Mr. Battle?
Mr. WHITMAN: I do not.
The MASTER: Then let Mr. Battle talk for himself.
Mr. WHITMAN: I will be candid to state, however, that I want this record to show that Mr. Battle sat here during this afternoon and might have been called and put on the stand while Mr. Babb was here. I know perfectly well when Mr. Battle is called back to the stand that counsel will examine him on ever- conceivable point he can think of. He won't limit his examination to the statement, and I want the record to show that the man sat there all afternoon and when the proper time comes I expect to have my objection to his testimony sustained on the ground that he sat there. I have sat here silent this afternoon, I was morally convinced that counsel did not want Mr. Battle here, but I was aware that to open my mouth was to subject myself to just such a suggestion as your honor makes, but I think that common courtesy to any human being would finally lead anyone to express themselves. I know there is a limit to the time when Mr. Battle can stay here without staying over night.

The MASTER: Certainly if Mr. Battle had appealed to me to let him off I should have been inclined to do so unless there was some good reason given why he should stay.

Mr. ROBBINS: Why, I supposed Mr. Battle understood that we did not want him until he got these statements. It never occurred to me that he was waiting around. I thought he was interested in the situation here and would like to spend the day here, that Mr. Whitman was so amusing and bright he would like to listen to him.

Mr. BATTLE: I am not interested in this. I do not know what the case is.

153 Mr. ROBBINS: Well, you need not remain any more on my account. I do not want you until we get those statements, because we cannot get along without them.

Mr. BATTLE: Can it be arranged?

The MASTER: I think if you can you should arrange so that one of them will come in at a time.

Mr. ROBBINS: Perhaps if you would go out to Aurora and send those statements into Mr. Dickes I could get all I need out of him and you would not have to come back at all.

Mr. BATTLE: That is what I thought. He is acquainted with the statements and the books and knows more about it than I can.

Mr. ROBBINS: Well, suppose you do that. You get them in here tomorrow morning and also send him in the book from which he can testify as to the volume of the business.

Mr. BATTLE: What do you mean? What books?

Mr. WHITMAN: If counsel closes with Mr. Battle I propose to cross examine him before he gets any other witness on the stand if I can do so.

Mr. ROBBINS: Then you will have to come back with the books if the court so rules.

The MASTER: Yes, he will have to come back for cross examination any way.

154 Mr. ROBBINS: Then you had better be in here tomorrow morning and Mr. Dickes we can arrange for tomorrow afternoon or perhaps some time Wednesday. But you will be here in the morning, if the master will go on in the morning.

Q. Mr. Babb, what have you that you can look at to ascertain and give to the court some idea of the extent of the business passing between you and the Hammond Elevator Company over this wire?

A. I keep what is called a sheet. Trades that are not closed out are still there on the sheets; when I close out a trade that ends that trade. I have got no use for that. When I close out a number of them I copy the old trade on a fresh sheet and do away with that old sheet. That is of no use to me.

Q. You understand what I am after? You are an intelligent business man.

Mr. WHITMAN: I object to the witness being lectured.

Mr. ROBBINS: I am complimenting him.
Mr. WHITMAN: If your honor please, it is entirely improper.

Q. I am trying to ascertain, Mr. Babb, as accurately as you can, for the information of the court, about what is the volume of business?
A. I understand you.
Q. Just a minute. Let us see if we have any question. Now, have you any data to which you can refer on that subject?

Mr. WHITMAN: I object on the ground the question has been asked and answered.
The MASTER: He may answer.
To which ruling of the court the defendant excepted.

A. I may do several trades to-day and close them up to-day, copy my sheet. I have got no use for that sheet.
Q. You have explained your sheet. Now, I ask if there
155 are any other data that you can refer to?
A. Back for several months? No, I don't think I could go back and figure.
Q. Have you got any books showing the amount you make?
A. No, sir; I don't keep a cash account; when I have money I put it in my pocket. If I pay a customer with that roll it is all right if I spend money it is out of that same roll. I don't know how much money I have in my pocket. If a man comes in with a bill I pay him out of the same roll.

Mr. WHITMAN: I move the roll be made an exhibit in this case.

A. You pay me money on margins on a trade in currency, I put it in my pocket; a man owes me some money for something else and I put it in the same roll. Perhaps I am careless in my way of doing business.
Q. I want to ask you again Mr. Babb, give me the best estimate you can of the volume of your business during the period we are inquiring about per day.

Mr. WHITMAN: I object to the question on the ground it has been asked and answered before, and it is immaterial and irrelevant.
The MASTER: He may answer if he can. He has said several times he could not.

A. I think I have answered that. There have been days that I have done nothing; there have been days I have done a thousand bushels of grain; there have been days when I did ten shares of stock there have been days when I have done 20 or 30, perhaps more, of grain, and some days had several order- on stocks.
Q. Aggregating how much?
A. Oh, I have had, as I say, nothing; and then there have been days when I would have two or three hundred shares of stock; I have not got a Chicago house here with great big trades, you cannot average.

156 Q. Does the statement of the single trade that we have referred to in your testimony represent the general method in which the business is done?

A. Yes.

Q. The whole volume of business is done in the way you have explained in reference to that single trade?

Mr. WHITMAN: I object. He just has been asked and answered.
The MASTER: He may answer.
To which ruling the defendant excepted.

A. Oh, done just the same, one, two, three, four, number three.

Cross-examination by Mr. WHITMAN:

Q. Now, Mr. Babb, you were asked on direct examination some questions that started out saying "Supposing you or your customer ordered a sale closed; if a customer of yours wants to order or does order a sale closed, what does he do?

A. He tells me to either close a certain trade that he had or sale; sometimes——

Q. Whom does he order to close the sale?

A. Myself.

Q. Does he know in the transaction the Hammond Elevator Company?

A. No, sir.

Q. Does he ever tell you to close his trade or your trade or any other trade with the Hammond Elevator Company?

A. He does not.

Q. Does he ever give you any directions as to your dealings with the Hammond Elevator Company?

A. No, sir.

Q. Does the Hammond Elevator Company know your customer in the transaction?

A. No, sir.

Q. When you order a sale closed what sale do you order closed?

A. The trade that the customer has. For instance, that number one.

Q. Whom do you order? Perhaps I didn't say what I
157 meant to. Whom do you order when you order a sale closed?

A. The Hammond Elevator Company.

Q. Do you ever do business with any other concern than the Hammond Elevator Company?

A. I have done some.

Q. Do you do it the same way as you do it with the Hammond Elevator Company?

A. I do the same as the customer will do me; I ask him to buy or sell.

Q. That is, one of these orders that a customer gives you you sometimes place not merely with the Hammond Elevator Company but with other concerns?

A. I have.

Q. If you deal with any concern than the Hammond Elevator Company do you give the name of your customer to that other concern?

A. No, sir.

Q. You deal with that other concern substantially as you deal with the Hammond Elevator Company?

A. Yes.

Q. Except as to terms, method of settlement, and you don't number the trade, I suppose?

A. The same, with the exception of the number.

Q. You have stated, I believe, that you paid the Hammond Elevator Company nothing out of grain commissions but out of stock commissions you paid them $5 a hundred?

A. Yes.

Q. You receive how much per 100 shares of stock?

A. $20.

Q. On every 100 shares of stock—that is, $20 is your commission, is it?

A. Yes.

Q. On every hundred shares of stock you pay the Hammond Elevator Company $5?

A. Yes.

Q. Have you any agreement or understanding with the Hammond Elevator Company by which they receive a portion of your commission as such?

A. $5.

Mr. WHITMAN: Read the question to the witness.

(Question read.)

158 A. Of my commission?

Q. That is what I said.

A. No.

Q. Do they in any way regulate or control the amount of commission that you charge your customer?

A. No, sir.

Q. Do they know the amount you charge your customer?

A. I hardly think they do.

Q. What is the $5 that you pay them figured on? Is it figured as one quarter of $20. or as a percentage on the stock?

A. They charge me a commission on trades that I make with them; they charge me $5. a hundred for doing business. I suppose, the same as I charge a customer $25.

Re-direct examination by Mr. ROBBINS:

Q. You said you have traded with others?

A. I have sent orders to other houses.

Q. When?

A. Well, I sent an order for grain I guess within a month.
Q. Does any other concern have any wire running into your office besides the Hammond Elevator Company?
A. No.

Mr. WHITMAN: I object to that as not redirect examination.

A. I do not care to have it go into the record, but I have a right to place my trade wherever I am a mind to.

(Question read.)
Mr. WHITMAN: I object to that also as assuming what does not appear in the record.
The MASTER: He answered no.

A. I have no other but the one wire.
Q. And did not have during this period between January and July?
A. No, sir.
Q. Now, do you recall a single trade during that period that you sent to any other person than the Hammond Elevator Company?
A. I have sent orders, given orders to other houses.
159 Q. During the period that we are talking about. Do you recall a single trade that you sent between January and July?
A. No.
Q. As a matter of fact, did not all of your business go to the Hammond Elevator Company during that time?
A. I presume most of it did, if not all, at that time. I am merely saying that I sent orders to other firms.
Q. But you do not recall of having done so during that period?

Mr. WHITMAN: He did not say so at all.

A. No, I cannot remember dates or months.

Mr. WHITMAN: You quit forgetting this man is your witness.

Recross examination by Mr. WHITMAN:

Q. Do you remember any concern other than the Hammond Elevator Company, any particular concern with whom you had placed or to whom you sent order or orders since you began doing business with the Hammond Elevator Company?
A. Yes.
Q. Give me the name of one of them?
A. Bartlett-Frazier.
Q. Do you know whether they are members of the board of trade or not?
A. I believe they are.
Q. How long ago did you give them that order?
A. I guess it is not over 2 or 3 weeks.

Q. Through whom?
A. The Bartlett-Frazier house in Peoria. I think Tom Grier.

Re-re-direct examination by Mr. ROBBINS:

Q. Did you personally give the order?
A. Sent up a note.
Q. You sent up a note to Bartlett-Frazier's man?
A. Bartlett-Frazier's house.
Q. A note written and signed by you?
A. I sent an order I think just on a blank. I won't be sure whether it was buy or sell some grain. I don't now remember exactly whether it was oats or corn. I just remember having an
160 order and sending it up stairs to Bartlett-Frazier and Mr. Grier got the order; whether it was handed to him or not I don't know.
Q. Well, was it an order sent by you and signed by you, or was it in the name of a customer of yours?
A. I signed my operator's name to it but it was my order.
Q. Why did you sign your operator's name to it?

Mr. WHITMAN: I object to that. We don't care anything about the metaphysics of the situation, your honor, and it is not material in this case.

The MASTER: I think he may answer.

A. Just like other people; they come in trading with me and they don't want people to know they are trading; they give some other name; I gave my operator's name with his permission.

Mr. ROBBINS: Now, he is to send up a statement, and if we can agree about having one go why all right, if not, you will have to come back.

A. You asked me to send you one of those statements by mail. That would necessitate my coming back.
Q. Well, when are you coming up again to town?
A. It is hard to tell.

Mr. WHITMAN: You closed with this witness, and if you want one of those terrible exceptions of mine in the record you can put him back on again.

Mr. ROBBINS: I don't want the witness to be relieved from subpœna.

Mr. WHITMAN: What buncom-e are you trying to work on this man. I never saw such a cheap lot of people. The great big mam-outh board of trade wants to keep a man around here deceived with the idea that he has to stay here with a subpœna day and day after day.

Q. Well, Mr. Babb will you come back without a subpœna or do you want your examination held open?

A. I understood I was excused, and I had to send up a statement that you——

161 Q. If Mr. Whitman does not agree to let that statement come in you will have to come back and verify it or else it will not go in your testimony.

Mr. WHITMAN: Can the witness' responsibility depend on what counsel agrees to?

The MASTER: I can direct that the witness be subpœnaed and direct that the witness return here but he will have to be given his mileage, of course.

Mr. ROBBINS: Well, we will give him his mileage.

The MASTER: Well, you say when you want him, Mr. Robbins.

Mr. ROBBINS: When does this case go over to after tomorrow?

The MASTER: Better go on Wednesday morning.

Mr. BROWN: We expect to be engaged in the trial of a case Wednesday, and if we get into it it will take two or three days, it is on the call.

Mr. ROBBINS: I am going to leave here Wednesday night.

Mr. WHITMAN: This will be the second continuance to accommodate Mr. Robbins, and I suggest it go over a week and take it up fresh next week, we will be free then and Mr. Robbins will be back.

Mr. ROBBINS: It should be a week from Wednesday.

The MASTER: The 18th, will that be satisfactory?

Q. Then you will return a week from Wednesday and we will arrange to pay you your mileage in the meantime.

The MASTER: Ten o'clock.

Mr. WHITMAN: Now, if counsel will close with Mr. Battle I can cross examine him and get through in five minutes at the outside.

Mr. BABB: Then it is not necessary for me to mail that statement. All you care for is for me to bring it in?

Mr. ROBBINS: Well, I want all the statements you have got. When you return on Wednesday bring up all the statements that you have, not simply one, but all the statements that you have. The master understands that, doesn't he?

162 The MASTER: Yes.

Mr. ROBBINS: If you want to send those statements up to the master in the meantime, do so, and we will try and see if we can arrange it.

A. I would just as soon mail the statements, much rather than come up here.

The MASTER: Well, you will have to come a week from Wednesday, Mr. Babb, and bring what statements you have with you, I understand you to say there are only a few.

A. Very few.

The MASTER: And that is conditioned upon your receiving your witness fees and mileage from counsel.

A. Will they send it to me, or will I get it when I come up here.

Mr. ROBBINS: Yes, we will have that figured out so you will have it before Wednesday. In the meantime you might send up those statements to the master that you have. Of course you will not destroy any statements from now on, so that a week from Wednesday we know you will have several statements. If you will send those up we will see if Mr. Whitman will be more reasonable. Perhaps we can avoid your coming at all.

The MASTER: Now, Mr. Robbins, how about Mr. Battle? Are you through with him, if Mr. Dickes can testify as to the statement?

Mr. ROBBINS: Why, I feel this way about Mr. Battle, if I can put Mr. Dickes on the stand and he has the statement and his evidence is closed, the testimony of one of them is just as good as both of them. If I don't feel I have a full statement from Mr. Dickes I should want Mr. Battle to return, but it is very evident, in order to get the statement from either I must have the documents as they have been referred to. I must produce copies of them.

The MASTER: I think with that understanding that if Mr. Dickes is not able to testify fully in regard to the statements to your satisfaction you can call Mr. Battle. Mr. Battle might now—his
163 testimony be considered closed and be cross-examined by Mr. Whitman.

Mr. WHITMAN: Well, I don't care to cross examine him on that stipulation. It is easy enough for counsel to open up this case without my agreeing to it.

Mr. BATTLE: Mr. Dickes, of course is more familiar with the statements and methods of all business than I am, because he does all business that is being done, and he can just as well answer on that, in fact, more fully than I can.

Thereupon the further taking of testimony in this cause was continued until 10 o'clock a. m. November 18th, 1903.

NOVEMBER 18TH, 1903—10 a. m.

Met pursuant to adjournment.
Present as before.

J. L. DICKES, a witness produced on behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. ROBBINS:

Q. What is your name?
A. J. L. Dickes.
Q. What is your business?
A. Commission business.
Q. Are you of the firm of Battle & Dickes, of Aurora?
A. Yes, sir.
Q. Are you the Dickes that is mentioned in the marshal's return here—service of writ?
A. I suppose so.

Q. You were served with a writ in this case?
A. Yes, sir.
Q. Mr. Battle, who has been on the stand, is your partner?
A. Yes, sir.
Q. How long have you and he been together in business?
164 A. A little over two years.
Q. You occupy an office in Aurora, do you?
A. Yes, sir.
Q. Have you occupied that same office for two years?
A. Yes, sir.
Q. You say you are engaged in the commission business? Explain that more fully?
A. What is it.
Q. What kind of a commission business?
A. Stocks and bonds only.
Q. Describe the offices you have?
A. What do you mean?
Q. Well, about how large a room is it?
A. A room just about the size of this one.
Q. The court don't know about this one.
A. That would be about—oh, I guess it is about 25 by 20.
Q. On the ground floor?
A. Yes.
Q. Opens onto the street?
A. No, sir.
Q. Is it in a building that fronts on one of the business streets of Aurora?
A. Yes, sir.
Q. What is there in the office? Is it all one room?
A. All one room.
Q. Is a blackboard in it?
A. Yes, sir.
Q. How large a blackboard?
A. Covers just one side of the wall and then a similar board about 5 or 6 feet square on the side wall.
Q. So there are two blackboards?
A. Two practically, yes.
Q. And what are the boards used for?
A. Stock quotations.
Q. You post the stock quotations?
A. Yes, sir.
Q. Between what hours?
A. From 9 to 2.
Q. Are those the market hours of the New York stock exchange?
A. Yes, sir.
Q. What portion of the so-called stock quotations of the New York stock exchange do you post on that black board?
Q. What portion?

165 Q. Yes?
A. Well, we post about 60 of them.
Q. You mean all the quotations that come in on 60 different stocks, is that what you mean?
A. Yes, sir.
Q. Every quotation on 60 stocks?
A. Yes, sir.
Q. Are these quotations that you receive what are known as the continuous complete quotations of the New York stock exchange?
A. I think so.
Q. How do these quotations come to your office?
A. Over a wire, by telegram.
Q. To whom does that wire belong?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.
The MASTER: He may answer if he knows.

A. I don't know.
Q. Does it belong to you or your firm?

Mr. WHITMAN: I object to that as calling for a conclusion of the witness.
The MASTER: He may answer.

A. No.
Q. Is it a wire over which the public messages go during the hours that you have it?
A. No, sir.
Q. Is it what is known in the trade as a private wire?
A. Yes, sir, that is, between those hours.
Q. A wire of which you and those connected with you have the exclusive use during those hours?
A. During those hours, yes.
Q. What hours?
A. Well, I think it is started to be used about 8:30 until some time after 2, 2:30, something like that.
Q. How do you know when to start with that wire, what indicates to you when the wire is yours in the morning?
A. Well, I am not an operator, so I don't know.
166 Q. Who else during that time has the use of that wire for the transmission of messages besides your firm?
A. No one in Aurora.
Q. Who from other points?
A. Well, I only judge from hearsay.
Q. From what other points do messages come over to you?
A. Well, the operator sometimes talks to De Kalb and Sycamore Davenport and Chicago and Hammond, Indiana.
Q. Well, from what points do messages generally pass to you on that wire?
A. From Hammond, Indiana?

Q. So far as your firm is concerned the wire is used then for the exchange of messages between Aurora and Hammond, Indiana?

A. I think so.

Q. What is the name of the concern at Hammond, Indiana?

A. The Hammond Elevator Company.

Q. The defendant in this case?

A. Yes, sir.

Q. Do you make any arrangements with any telegraph company for that wire?

A. In what way?

Q. Has the firm of Battle & Dickes made any lease or any arrangement with any telegraph company or with the owner of that wire for its use during those hours?

A. Well, the wire was there when I became a member of the firm. I guess it is the same wire used to this day. There have been no arrangements made that I know. What arrangements Mr. Battle made I never asked him.

Q. Do you keep the books of Battle & Dickes?

A. Well, yes.

Q. You would know if any money was paid out by that firm for the use of that wire to any telegraph company, would you not?

A. Yes, sir.

Q. To your knowledge is any money paid by your firm to any telegraph company for the use of that wire?

A. No.

167 Q. Do you pay to any body anything on account of the use of that wire?

A. Yes, sir.

Q. To whom?

A. The Hammond Elevator Company.

Mr. WHITMAN: Is that the defendant in this case?

Q. How long have you been paying the Hammond Elevator Company money on account of the use of that wire?

A. Ever since the firm has been in existence.

Q. What firm? The Hammond Elevator Company or you?

A. The Hammond Elevator Company.

Q. And how long ago was that?

A. I think it is about 11 months ago or thereabouts; along the first of the year.

Q. So that the only arrangement of any kind that your firm has respecting the use of this wire is with the Hammond Elevator Company?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness, on the ground that it is argumentative, and has already been asked and answered.

The MASTER: He may answer.

The WITNESS: Read the question, please.

(Question read.)

A. Yes, sir.

Q. You said that wire had been there ever since your firm had been in existence. What arrangement did you have with any person or company for the use of that wire before the Hammond Elevator Company came into existence?

Mr. WHITMAN: I object to that as immaterial and irrelevant. The question is leading and suggestive.

The MASTER: I don't think that it — competent, Mr. Robbins.

Q. What is the kind of business that you do here that you call a commission business? Will you explain more fully?

A. Well, people wanting to buy stocks or bonds come in
168 and we buy them for them and charge them a commission.

Q. Well, does your trading also include orders in grain?

A. No, sir, we do not do any grain business.

Q. You do not do any grain business?

A. No, sir.

Q. Do any orders for grain go over your wire from this office to the Hammond Elevator Company?

A. No, sir.

Q. You say that the blackboard reviews for the quotations of 60 stocks. How soon in the morning do the quotations begin to come into your office on stocks?

Mr. WHITMAN: I object to the form of that question, your honor, and I wish to enter a general objection to counsel restating to the witness what he has previously testified to.

The MASTER: Well, as long as he does not mistake it I do not think there is any objection to it.

Mr. WHITMAN: Certainly it is leading; it is not a proper method for counsel to examine his own witness, sort of baby him along.

The MASTER: I don't think there is any legal objection to it as long as he states properly what the witness has answered.

(Question read.)

A. Well, we get the London market—the time varies, it is always shortly before the opening.

Q. Well, when do you begin to get the New York stock market?

A. Shortly after 9.

Q. How soon after 9?

Mr. WHITMAN: I object to that as immaterial and irrelevant. Not admissible under the issues on this reference.

This is now an effort to go into the question of the source of their markets or their quotations that has no bearing whatever on this case.

The MASTER: I am inclined to think that is competent.

(Question read.)

169 A. Two or three minutes.

Q. And how frequently are the quotations posted after you begin?

Mr. WHITMAN: I object to that as immaterial and irrelevant.

The MASTER: He may answer.

A. The time varies. It depends on the condition of the market. If trading is very active why quotations are—it is hard to tell; I am not an operator; if I was I would probably know more about it, but they are put down on the board perhaps continuously for 5 minutes and then again there is an interruption of a few minutes, and then a few quotations and another intermission and then some more the time varies; it depends on the condition of the markets.

Q. In the manner that you have now described how long does that posting of quotations continue during a day?

A. Until 2 o'clock or a few minutes after.

Q. Now, when a customer comes in to make a trade what is the first step in the trade?

A. Why, he tells us what he wants to buy, if he don't tell us he writes the order.

Mr. WHITMAN: I move to strike out the statement of the witness as to what the customer tells him or writes him as being inadmissable as against the defendant.

The MASTER: It may stand.

Q. Does he name the price?

Mr. WHITMAN: I object to the question on the ground that the oral conversations between this witness or members of his firm and third parties are not admissable against the defendant to prove the agency which is in issue.

The MASTER: Objection overruled. This is merely showing the custom of the business. It is not any particular conversation that is asked for at all.

170 Mr. WHITMAN: It is all the harder for us to be bound by what this man comes in and says about generally.

(Question read.)

A. Sometimes.

Q. When he names a price where does he get the price?

A. That is something I don't know.

Q. Does he get it from the blackboard?

A. Not necessarily.

Q. Does he usually?

A. That is hard to answer.

Q. What is the purpose of posting the quotations upon the blackboard?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

The MASTER: Objection sustained.

Q. Is the blackboard so located that the customers see the prices posted?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

The MASTER: He may answer.

A. Yes.
Q. Are there chairs in front of the blackboard?
A. Yes, sir.
Q. For the customers to sit in?
A. Yes, sir.
Q. Do you have a regular form of order for customers to sign when they give a written order for a trade?
A. Yes, sir.
Q. Have you one of those with you?
A. No, sir.
Q. Look at Complainant's Exhibit Number 1, case No. 26588 and see if that is the form of the written order used by your customers when they write their orders?

Mr. WHITMAN: I ask to have the paper marked for identification in his case before it is exhibited to the witness. I do not think there is any occasion in this case to use marks of identification in other cases.

The MASTER: It can be marked if it is introduced in evidence.

Mr. WHITMAN: Exception.

171 (The paper was then shown to the witness.)

A. What is the question?

(Question read.)

A. That is buying order, the kind they use for buying purposes.
Q. You have another form for selling order, have you?
A. Yes, sir.
Q. In this document what does "10 U P A C 101½" mean?

Mr. WHITMAN: I object to the question until the instrument referred to is identified.

The MASTER: You may answer.

A. That is an order to buy 10 shares of Union Pacific at 101½.

The MASTER: I understand that instrument has already been introduced in evidence in this case.

Mr. ROBBINS: Yes, it has.

Mr. WHITMAN: In this case?

The MASTER: Yes, and copied into the record.

Mr. WHITMAN: Then it ought to be marked for identification so we can identify the two. How is the circuit court of appeals going to say this is the same? I had no recollection that this same instrument had been offered in evidence in this case, and have no recollec-

tion now. If this instrument when it was introduced before had been marked for identification in this case, then we would not be spending the time investigating the question now.

(The document here referred to already appears on page 65 of this record.)

Mr. ROBBINS: I want it to appear of record that the document shown the witness is the same one I introduced in evidence in Mr. Battle's testimony so I won't have to copy it in again.

The MASTER: I intended to mark that as Complainant's Exhibit 1 in this case also; I will mark it Complainant's Exhibit 1 in this case.

Q. When you receive an order from a customer in the form of Complainant's Exhibit 1, what is the next step in the transaction?

172 A. It is handed to the operator.

Q. You hand it to the operator?

A. Yes sir.

Q. And what does he do?

A. Sends it in.

Q. Are you familiar with the form of message that he sends over the wire?

A. No, sir.

Q. Do you know in a general way what he sends over the wire?

A. I don't know what he sends, but I know what is wanted.

Q. Well, before you hand him the order Complainant's Exhibit 1 do you put any number on it?

A. No, sir.

Q. Is a number put on it at all?

A. The operator, I think, puts it on.

Q. The operator puts the number on it?

A. Yes, sir.

Q. In Complainant's Exhibit 1, what is the number that the operator puts on?

A. 573. The number that he would put on there first is not that, because that is a sample order written to be introduced in evidence on the former trial.

Mr. WHITMAN: I move to strike out the volunteer statement of the witness, "written to be introduced in evidence on the former trial."

The MASTER: Yes, that should be stricken out.

Q. What is there in Plaintiff's Exhibit 1 that indicates the number that is put on the order?

A. 573.

Q. What is the purpose of putting a number on the order?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

The MASTER: He may answer.

A. Why, to identify the order.
Q. Is each order given a number?
A. When filled, I think.
Q. When filled?
A. I think it is, I don't know.
Q. Does the telegram sending the order forward mention the number?

Mr. WHITMAN: I object to the question, in that it assumes something that does not appear in the evidence, that he sends the
173 order forward.
The MASTER: If he knows he may answer.
Mr. WHITMAN: But your honor, he cannot answer whether he sends the order forward.
The MASTER: He has already said that he did.
Mr. WHITMAN: Well, he has not said that he did, with all due deference.
The MASTER: Read that. I am pretty sure he did.
(Question read.)

A. I really don't know.
Q. Do you keep the books of Battle & Dickes?

Mr. WHITMAN: He has answered that already.
The MASTER: Yes, he said he did.

Q. In keeping the books does the number put upon the order play any part?
A. Yes, sir.
Q. To what extent?
A. Why, to the extent of identifying that particular trade.
Q. Is that order entered upon your books before the trade is accepted?
A. No, sir.

Mr. WHITMAN: I don't know that I still grasp the force of that question. I should like to object to the question as calling for the conclusion of the witness and involving an assumption as to the action of some one or something; I don't know what, upon this order, stating a conclusion as to the effect of something that the question assumes is or is not done, and I move to strike the answer out.
The MASTER: Well, it is a plain question and it is answered.
Mr. WHITMAN: But, your honor, he has not said anything about anyone accepting a trade, and the question does not ask accepted by whom or what. What does it mean? Nothing has been developed in this testimony so far about anybody accepting an order or a trade.
174 Mr. ROBBINS: That will appear.
The MASTER: I think it may stand.

Q. When you hand this order to the telegraph operator what is the next step in the transaction, so far as you know?

A. There isn't anything further to be done about it.

Q. Well, when do you next come in contact with the trade?

A. When it is filled, if at all.

Q. Do you receive any message back over this wire from the Hammond Elevator Company concerning this trade?

A. Not unless it is filled.

Q. Well, in case it is filled, do you?

A. Yes, sir.

Q. Does that message come to you?

A. Yes, sir.

Q. Have you any of those messages with you?

A. No, sir.

Q. Do you file away these messages?

A. To facilitate matters we use the orders that are sent in.

Q. What?

A. To facilitate matters we use the order.

Q. How do you use the order?

A. The operator puts a circle with blue pencil and the price and time that the order was filled.

Q. In Exhibit 1, what does the operator put on the order when the telegram is received from the Hammond Elevator Company?

A. 101½ 9:50 A.

Q. What does 101½ mean?

A. The price it was bought at.

Q. What does 9:50 A mean?

A. The time in the morning.

Q. Time what?

A. That the order was filled.

Q. The time the order was filled? Where does the operator get 101½ which he writes on the order in blue pencil?

Mr. WHITMAN: I object to that as calling for a conclusion of the witness.

The MASTER: He may answer if he knows.

A. I suppose from Hammond.

Mr. WHITMAN: I move to strike out the supposition of the witness.

175 The MASTER: It may be stricken out.

Q. Where does he get it? What paper, or what does he get it from to put it in?

Mr. WHITMAN: I object to that as leading and calling for a conclusion of the witness.

Q. What does it indicate?

Mr. WHITMAN: I object to that as calling for a conclusion of the witness.

The MASTER: He has already said that.

Q. What does it indicate?

The MASTER: The price it was bought at, he says.

Mr. WHITMAN: I object to that as calling for the conclusion of the witness and on the ground it has already been asked and answered.

The MASTER: Objection sustained.

Q. Well, where does the operator get the information which leads him to put upon this order 101½?

Mr. WHITMAN: I object to that as leading and calling for the conclusion of the witness, and on the ground that it has been asked and answered already and it appears that the witness does not know.

The MASTER: Well, he has not said that he does not know.

Mr. WHITMAN: He has said that he is not a telegraph operator and did not know what was sent over the wire and only could suppose.

The MASTER: If he knows he can answer the question and if he does not know he can say he doesn't know.

A. Read the question.

(Question read.)

A. I do not know.

Q. Where does he get the information that leads him to put 9:50 A on this exhibit?

Mr. WHITMAN: I object to that as leading and calling for the conclusion of the witness.

176 The MASTER: He may answer if he knows.

A. Well, we have a clock in the room and I see him look at it. I judge that is where he gets it from.

Mr. WHITMAN: I move to strike that out as a statement of the conclusion of the witness and his opinion, his statement that he judges that is where he gets it.

The MASTER: It may stand.

Q. When do you next see this order after you deliver it to the telegraph operator?

A. I don't see it again, unless it is filled.

Q. Well, in case it is filled, when do you next see it, how do you next see it?

A. He hands it to me.

Q. The telegraph operator hands it back to you?

A. Yes, sir.

Q. What does it have on it when he hands it back to you that it did not have on it when you handed it to him?

A. That circle with 101½ and 9:50 A inside of it.
Q. How about the figure 573?
A. That also. I had forgotten that.
Q. Well, what do you do with the trade then?
A. I enter it in a book.
Q. Why do you enter it in a book?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness, his statement of an opinion.
The MASTER: The objection is sustained.

Q. What else do you do in the transaction?
A. Inform the customer.
Q. What do you inform the customer?
A. That the trade is filled.
Q. You inform the customer that the trade is filled. Do you state the price at which it is filled?
A. Not necessarily.
Q. Is that communication made by letter or by word of mouth?
A. Both, if he is present we inform him by telling him.
177 Q. When you inform him that his order is filled and the price where do you get the price from that you tell him?
A. I don't understand that question.

(Question read.)

A. I don't always tell him the price.
Q. When you do tell him the price where do you get the price from?
A. It is in the circle.
Q. From the figures in the circle?
A. Yes, sir.
Q. Why do you not inform him that his trade is filled as soon as he gives the order?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.
The MASTER: Objection sustained.

Q. Do you ever inform a customer that his order is filled before you get back the order with the blue figures on it?
A. No, sir.
Q. Do you treat any order as a trade before the telegraph operator puts the figures and circle upon it?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.
The MASTER: Objection sustained.

Q. Do you ever enter an order as a trade upon your books before the telegraph operator hands back the order with the blue pencil marks on it?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness as stated, to include the words "as a trade."
The MASTER: I think he may answer that.

A. Read the question again.

(Question read.)

A. No.
Q. Is the order entered in any way upon your books before that time?

178 Mr. WHITMAN: I object to that on the ground that the question has already been asked and answered.
The MASTER: I think he may answer the question.

A. No.
Q. When you enter the order on your books how is the order entered, by the name of the person giving the order or the number printed upon the order by the telegraph operator?

Mr. WHITMAN: I object because it does not indicate whether counsel means entered as a trade or as an order or as an entry in some other mysterious manner that counsel has in mind.
Mr. ROBBINS: He has just testified he does not enter them as orders, he only enters them after the telegram comes back and they are entered as trades.
The MASTER: He may answer.

A. Read the question.

(Question read.)
Mr. WHITMAN: I want to further object on the ground that he has expressly testified he does not enter it as an order at all, and the question therefore assumes something that does not appear from the evidence.
The MASTER: Well, we seem to be using the words order and trade interchangeably here.
Mr. WHITMAN: There will be an argument upon this testimony based on a very fine distinction between the two, and I think it ought to be observed.
(Question read.)
Mr. WHITMAN: This question assumes he entered an order. No, he has not testified that.
The MASTER: If he has testified he does not enter an order until it has been filed, then his subsequently calling it an order does not alter that fact at all. He may answer.

A. We use both, number and name of customer.
Q. Explain that a little more fully, Mr. Dickes.
179 A. Why, when the trade is filled we enter the number and the customer's name and what he bought and the price.
Q. In how many books?

A. Just one book for that purpose.
Q. What?
A. Just one book for that purpose.
Q. Do you keep a separate account in your books with each customer?
A. Yes, sir.
Q. Is that in the form of a ledger account?
A. Yes, sir.
Q. And the number of the trade of each customer is entered in this account, is it?
A. Yes, sir.
Q. How does the number figure in the account?
A. I don't understand you.
Q. Well does it appear as often as the trade is entered in that account?
A. Yes, sir.
Q. So that each trade receives its number in your book from start to finish is that right?
A. Yes, sir.
Q. When a trade is opened in the manner you have described, what is the next step in the transaction?

Mr. WHITMAN: I object to that as assuming something that has not been testified to. This is the first I have heard in the testimony of this witness of a trade being opened. What he means by trade opened I don't know, except I know, your honor, that he is going to argue to your honor that the trade is opened or that there begins to be a tr*dae* or something of that kind when a telegraphic communication is sent to the Hammond Elevator Company.

The MASTER: I think that question is a little indefinite, Mr. Robbins.

Mr. ROBBINS: I don't think it is, with this witness.

Mr. WHITMAN: Yes, but he is not testifying to anything of the kind, and he does not know what you mean by opened.

Mr. ROBBINS: When an order is given and accepted a trade is opened, there is not a man connected with the board of trade business that does not know that, or the stock business.

The MASTER: Well, put it a little more specifically, Mr. Robbins.

180 Mr. ROBBINS: I don't believe I can.

The MASTER: Put it in the terms in which you have just defined it.

Q. Do you know what is meant by the words opening a trade in your business?

Mr. WHITMAN: I object to that as assuming that it has any particular significance in his business.

The MASTER: He may answer.

A. There is something I understand by that.

Q. Well, now what does it mean?
A. When a trade is filled.
Q. In the manner that you have described?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness and as being too indefinite, your honor.
The MASTER: He may answer.

A. What is the question?

(Question read.)

A. Yes.

Mr. ROBBINS: Now I will ask the stenographer to read the question I asked.
(The following question was then read by the stenographer: "When a trade is opened in the manner you have described, what is the next step in the transaction"?).

A. Why, I told you. If it is entered on that sheet which is in book form, the trade is filled. If it is paid for, why it doesn't go any further.
Q. If it is what?
A. If it is paid for.
Q. What do you mean by that?
A. If he makes a deposit.
Q. Well, when is the deposit made?
A. It depends on the customer.
Q. Well, as to some customers when is a deposit made?
A. After it is filled.
Q. As to other customers when is the deposit made?
A. When they give the order.
Q. Now what determines whether a given customer belongs
181 to one or other of those classes?
A. It depends on his standing his financial standing.
Q. If there is a man in whose financial responsibility you have confidence, you fill the order before you get the money?
A. Yes, sir.
Q. And if he is not you do not?
A. Yes, sir.

Mr. WHITMAN; Does that indicate in any way whether the Hammond Elevator Company employs these fellows?
Mr. ROBBINS: I think we will find that out when we get along.

Q. Is there any fixed sum that you exact in the way of deposit?
A. From some people.
Q. Well, what is the sum?
A. It depends a great deal upon who the customer is.
Q. Well, a customer whose financial responsibility does not enter into consideration with you, how much is exacted?

A. There is not any particular amount exacted if he is all right.
Q. What?
A. If the customer's financial responsibility is all right there isn't any fixed sum exacted.
Q. My question assumes that it is not all right. That you do not consider that at all. What is the amount exacted?
A. From two points upwards.
Q. What do you mean by two points?
A. Two dollars a share; that is the minimum allowance.
Q. On ten shares of Union Pacific stock, what would that amount to in dollars?
A. The least we would take on that trade would be $20. It depends largely on the stock he trades in.
Q. As a general thing do you or do you not exact a deposit of money on these trades either when the order is given or when the trade is accepted.

Mr. WHITMAN: I object to that on the ground that the subject matter of the question has been testified to by the witness already and the ground fully covered. He has stated just exactly what he does do.
182 The MASTER: He may answer.

A. As a rule we do not.
Q. Do your customers as a general thing keep money on deposit with you?
A. Yes, sir.
Q. And is it only with customers that so keep deposits with you that you do not exact the margins?
A. State that again.

(Question read.)

A. Not necessarily.
Q. As a general rule?
A. As a general rule, yes.
Q. Well, what is the next step in the transaction?

Mr. WHITMAN: I object to the question as unintelligible.
The MASTER: He may answer.

A. I don't know as there is anything further to do.
Q. Is the trade ever closed out?
A. As a rule.
Q. As a rule. Well now explain how that is done.
A. If the customer does not have the stock delivered to him, why it remains on the books. If the stock should attain the price at which he wishes to sell, he gives the order.
Q. How does he give the order to close?
A. He tells us.
Q. Does he give a written order?
A. As a rule.

Q. In substantially the form of Exhibit 1?
A. The wording is a trifle different.
Q. Does the order as a rule mention the price at which the transaction is to be closed out?
A. As a rule.
Q. If the original transaction was a purchase it would direct the sale of the same number of shares, would it?
A. Yes, sir.
Q. Giving the price at which the customer desired the trade to be closed?
A. Yes, sir.
Q. What do you do with that order when you get it?
A. Hand it to the operator.
Q. How does the number of the trade get on to the order? Do you put it on?
A. What order?
183 Q. The closing order?
A. We put it on, take it from our books.
Q. And put it on the order?
A. Yes, sir.
Q. And what does the operator do?
A. Sends it.
Q. Sends it where?
A. To Hammond.
Q. And what next happens?
A. There is nothing further happens unless it is sold.
Q. Well, if it is sold what happens?
A. He does the same as when filling. He rings it. Puts a ring and the price and the time and hands it to me.
Q. Does he do that as soon as you hand him the order?
A. No, sir.
Q. When does he do that?
A. When it is sold.
Q. You mean when he gets word over the wire that it is sold?
A. Yes, sir.
Q. And where does he get the price that he puts in the circle in that order?
A. I suppose from people that send the order.

Mr. WHITMAN: I move to strike out the supposition of the witness.
The MASTER: It may be stricken out.

Q. The order comes back to you with the price on it?
A. Yes, sir.
Q. In a circle?
A. Yes, sir.
Q. What do you do with that price?
A. I put it on the book.
Q. What do you put it on the book for?

Mr. WHITMAN: I object to that as calling for a conclusion of the witness.

The MASTER: I don't think it is competent.

Q. How do you enter it on the book and where?

A. Why I put the price on that sheet we keep.

Q. The price on the sheet?

A. Yes, sir.

Q. What sheet?

A. That sheet that I first entered the order upon when it was filled?

Q. And where with reference to the first entry do you put this price?

A. Right back of it.

184 Q. On the same line?

A. On the same line.

Q. And is it in a certain column. Is there any heading to the column at which that price is put?

A. I don't know whether there is or not.

Q. What is the column used for that you put this price on?

A. I put on the price at which the trade is closed.

Q. It is a column set aside on that sheet for the closing price?

A. Perhaps, I do not know, I put them on a certain line. I do not know what the heading is.

Q. Independent of whether there is any heading or not, it is a column set aside on that sheet for the closing price?

A. Yes, sir.

Q. And it indicates to you on that sheet the price at which the trade was closed?

A. Yes, sir.

Q. So that on one line you have the price at which the trade is opened as indicated by the circle, and further along on the same line the price at which the trade is closed, as indicated by the circle in the closing order?

A. Yes, sir.

Q. Now, do you ever enter the closing price on one of these trades before the telegraph operator hands you back a closing order with the circle round it?

A. No, sir.

Q. Do you ever treat any trade as closed before you receive such an order with the circle round it?

Mr. WHITMAN: I object to the question as calling for the conclusion of the witness.

The MASTER: The objection is sustained.

Q. Do you ever indicate upon the sheet that you keep opposite this trade or upon the line set aside for this trade that the trade is closed before you receive the return of the closing order with a circle round it containing the price?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

185 The MASTER: I think he may answer that.

A. No.

Q. When you receive this order book from the telegraph operator, this closing order with a circle round it, do you make any communication verbal or in writing, to the customer?

A. As a rule, if he is present we tell him.

Q. Tell him what?

A. That the trade is closed.

Q. Do you tell him the price at which the trade is closed?

A. Not necessarily.

Q. Do you ever?

A. Yes, sir.

Q. What price do you mention?

A. The price it was closed at.

Q. The price in the circle?

A. Yes, sir.

Q. Do you ever inform the customer that his trade is closed before you receive back the closing order with the blue pencil circle around it in figures?

A. No, sir.

Q. Why not?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness and argumentative.

The MASTER: The objection is sustained.

Q. Is there any other circumstance under which the trade is closed?

A. No, sir.

Q. Is it ever closed because the margin is exhausted?

A. Yes, sir.

Q. Well now explain how the trade is closed under those circumstances?

A. Well, if the price of the stock reacts to about to where the margin carries it, we inform the customer. If he does not wish to put up any money we close it out. If he does——

Q. Well now, just how do you close it out? Do you write an order?

A. Yes, sir.

Q. Just like the other order?

A. Exactly.

Q. Signing whose name to it?

A. His own.

186 Q. Signing his name to it?

A. Yes, sir.

Q. Is it handed to the telegraph operator in the same way?

A. Yes, sir.

Q. Does it come back to you in the same way with a circle around it, giving the price and the time?
A. Yes, sir.
Q. And it is entered upon the sheet in the same way?
A. Yes, sir.
Q. And when do you notify the customer that the trade is closed? Is it before or after you receive the order back from the telegraph operator with a circle around it?
A. After.
Q. Do you ever inform him before?
A. No, sir.
Q. When do you enter such a trade as closed on your sheet? After the order comes back from the telegraph operator to you with a circle around it, or before?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.
The MASTER: He may answer.

A. Afterwards.
Q. Do you ever enter it before?
A. No, sir.
Q. When a trade is closed in one or the other of those two ways, do you make any statement to your customer showing the result of the transaction to him?

The MASTER: A written statement do you mean?
Mr. ROBBINS: I am going to find out whether it is written or not.

A. State that again please?

(Question read.)

A. Sometimes.
Q. Is it in writing?
A. Yes, sir, sometimes.
Q. Now what does it show?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness and not the best evidence.
Mr. ROBBINS: Course of business.
The MASTER: I think he may answer.

187 A. It shows the whole transaction.
Q. Does it show the price at which the stock has been bought?
A. Yes, sir.
Q. And does it show the price at which the stock has been sold?
A. Yes, sir.
Q. Are the same prices that are entered upon your sheet or book?
A. Yes, sir.
Q. Does it show the number of the trade?
A. Yes, sir.

Q. Being the same number that is given to the trade at the outset?
A. Yes, sir.
Q. Does it show the kind of stock dealt in?
A. Yes, sir.
Q. And the quantity dealt in?
A. Yes, sir.
Q. And the profit or loss in the transaction?
A. Yes, sir.
Q. Now what else does it show?
A. I do not believe there is anything more necessary.
Q. Does it show the deposits made at the opening of the trade when one is made?
A. Certainly.
Q. What?
A. Certainly.
Q. Does it show any commission?
A. Yes, sir.
Q. And how much commission?
A. One quarter of one per cent.
Q. One quarter of one per cent.?
A. Yes, sir.
Q. How much would that be on ten shares of stock?
A. $2.50.
Q. And that $2.50 is deducted from his profit, if he has made one, in that statement?
A. Yes, sir.
Q. And is added to his loss if he has made one in that transaction?
A. Yes, sir.
Q. And you pay him the balance if the result is a balance in his favor, or you collect from him the balance if the balance is coming from him?
A. Not necessarily.
Q. Well, when don't you?
A. Sometimes he just leaves it to his credit on our books.
Q. Well, ultimately you get that balance from him when the balance is against him on that statement?
188 A. We try to.
Q. And generally do, don't you?
A. Well, sometimes we do and sometimes we do not.
Q. Following the sending of the opening order Exhibit 1, do you receive from the Hammond Elevator Company any statement in which this trade figures?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness, and on the ground that it appears that his only knowledge on the subject would be hearsay derived from his operator.
The MASTER: He may answer.

A. Yes, sir.
Q. When?

A. The next morning.
Q. Have you any of those statements with you?
A. To tell the truth, I forgot to bring them, left them on my dresser this morning when I changed my clothes. I spoke to the master about it and told him I would send him one to-night when I got back home.
Q. From whom do these statements come?
A. From the Hammond Elevator Company.
Q. And how many statements do you get each morning?
A. One.
Q. Well, the morning after you get the order—would the statement received the morning after you gave the order, Exhibit 1, contain that order?
A. Yes, sir, that is, if it was filled.
Q. What would the statement contain as respects that order?

Mr. WHITMAN: I object to that as not the best evidence and on the ground that the proper foundation has not been laid.
The MASTER: You may answer.

The *Master:* The number of the trade.
Q. 573?
A. Yes.
Q. What is the next?
A. The amount of money.
Q. What amount of money?

Mr. WHITMAN: I move to strike out the answer of the wit-
189 ness as not responsive to any question. Counsel was right in the middle of a question, turned to Mr. Hill to find out what the rest of his question should be, and the witness volunteered an answer to the question and I object to it.
The MASTER: Finish the question if it is not finished.
Mr. ROBBINS: Read it and see.
(Question read as follows: "What is the next?")
Mr. ROBBINS: That is complete.
Mr. WHITMAN: I object to the question as unintelligible, as calling—if it does mean to call for what is next on the statement—for the conclusion of the witness and not the best evidence and on the ground the proper foundation has not been laid for oral testimony of the witness as to the general contents of this series of statements. There is a way to prove the general contents of a series of written instruments, but it is not by oral testimony out of a clear sky.
The MASTER: Let him answer.
Mr. ROBBINS: Did he answer that?
(Answer read.)
Mr. WHITMAN: That answer, I understand, is stricken out, your honor.
The MASTER: Oh no, I ruled that if he had not completed his

question he should complete it, but he said he had completed it, and the witness answered, so there is no occasion to rule it out.

Mr. WHITMAN: I would like a ruling on my motion to strike out, and would like the record to show that at the time the witness answered the court and counsel were not looking at the witness and counsel was looking at Mr. Hill. I have a right to make my record and Mr. Robbins knows and I know and your honor knows if you have been watching, and counsel knows, that the question was not completed, and the answer was volunteered and should not go in, and I have a right to make my objection.

The MASTER: Certainly you have a right to make your objection.

Mr. WHITMAN: But I could not when he was in the middle
190 of a question. I was waiting for him to complete his question.

The MASTER: Well, the ruling is the same as it would have been if your objection had been made before the answer was given. The ruling on the motion to strike out is the same.

Mr. WHITMAN: Well, with that understanding, of course, your honor, I am perfectly willing, but at the time he made his answer I had not had an opportunity to state the grounds of my objection, and as they are special, I could not save my point on a mere motion to strike out.

(Question read as follows: "What amount of money?")

Mr. WHITMAN: I object to that on the ground that it is incompetent and not the best evidence, that it calls for the conclusion of the witness, a statement of the contents of a written instrument, and that the proper foundation has not been laid for oral testimony of the witness as to the contents of the series of papers alluded to.

The MASTER: He may answer.

A. The amount of money required.
Q. Required by whom?
A. By us.

Mr. WHITMAN: The same objection, and also that it calls for the conclusion of the witness as to the meaning of the written entries to which he is testifying.

The MASTER: He may answer.

Q. Required by whom?

Mr. WHITMAN: I object to that question on the same ground as I objected to the previous question.

The MASTER: I think he may answer.

A. By us, from us.
Q. By whom?

Mr. WHITMAN: I object to the question on the ground it has been asked and answered, and on the same ground in addition that I objected to it before.

191 The MASTER: He may answer.

A. Read the question.

(Question read)

A. I don't understand.
Q. Who requires it from you?
A. The Hammond Elevator Company.

Mr. WHITMAN: I object to that on the same ground I have ob jected to the last three questions. And on the further ground it ha been asked and answered.
The MASTER: It may stand.

Q. How is that amount determined?

Mr. WHITMAN: I object to that as calling for the conclusion o the witness and on the same general ground that I am objecting t all this testimony.
The MASTER: I don't think that is competent, Mr. Robbins.

Q. Who determines the amount?
A. I object to that as calling for the conclusion of the witness.
The MASTER: If he knows he may answer.
A. The Hammond Elevator Company.
Q. Have you any understanding or agreement with the Hammond Elevator Company by which that amount is determined?

Mr. WHITMAN: I object to that as calling for the conclusion o the witness.
The MASTER: He may answer.

A. Yes, sir.
Q. What is that understanding?

Mr. WHITMAN: I object. Not competent or proper evidence, on the ground it does not appear whether the understanding or agreement is in writing or oral; and if in writing the written statement is the best evidence, if oral that the words constituting the agreement should be shown, and not the conclusion of the witness as to its effect.
192 The MASTER: The objection is overruled.

Q. What is the question?

(Question read.)

A. A dollar a share.
Q. The understanding that the amount shall be a dollar a share?
A. That we deposit, the Hammond Elevator Company.
Q. Is that understanding a verbal one or a written one?
A. I don't know.
Q. Do you know of any writing in which it appears?
A. Not that I know of. I think there is, but I never say any.

Mr. WHITMAN: I wish to move to strike out the statement of the witness as to their being any such agreement or understanding as to this charge, and his statements as to the amount of it, on the ground that it appears that there is a written agreement and he has never seen it.

The MASTER: I think it may stand.

Q. What is the understanding as to the amount. Is it a fixed amount for so many shares?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

Q. Or does it vary?

Mr. WHITMAN: I object to the question as amended as calling for the conclusion of the witness, statements of the contents of an agreement or understanding which appears to be in writing, or if oral as a statement as to the effect of the agreement instead of its actual terms, is incompetent, immaterial and irrelevant.

The MASTER: He may answer.

A. What is the question?

(Question read as amended.)

A. A dollars a share.

Q. So that on every ten share transaction on one of these
193 statements the amount required by way of deposit would be ten dollars?

Mr. WHITMAN: I object to that as leading, argumentative and calling for the conclusion of the witness.

The MASTER: He may answer.

A. What is that?

(Question read.)

A. Yes, sir.

Q. And if it was $100 it would be—100 shares would be $100.

Mr. WHITMAN: I submit counsel has a right to introduce the multiplication tables here and save time.

A. Yes.

Q. Now what else would be entered on the statement you receive the next morning in respect to the trade covered by Exhibit No. 1?

A. What else might?

Q. Would be entered on the statement?

Mr. WHITMAN: The same objection that I introduced to the previous similar questions, on the ground that—I don't suppose it is necessary for me to restate my grounds for every one.

The MASTER: No, I don't think it is. He may answer.

A. If a trade calls for a remargin it would appear on the statement.

Q. Well, the morning after the trade was opened would there be anything else on the statement except the number of the trade and the $10 that you speak of?

A. No, sir.

Q. Now explain what you mean by a remargin?

A. If the market should react sufficiently to call for a remargin on that trade it would be charged.

Q. Charged by whom?

A. By the Hammond Elevator Company.

Q. How much would be charged on ten shares of stock?

A. It depends on the market.

Q. Is there any understanding or agreement between you and the Hammond Elevator Company as to the amount to be charged on remargins?

194 Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

The MASTER: He may answer.

A. Whatever is required.

Mr. ROBBINS: Read the question to the witness.

(Question read.)

Mr. WHITMAN: I object on the ground the question has been asked and answered.

The MASTER: Let him answer.

A. What is my answer?

(Answer read.)

A. Yes, sir.

Q. The question is what the understanding is. Is there any understanding as to any fixed amount that should be charged on these statements on a remargin?

Mr. WHITMAN: I object to that on the ground it is incompetent and no proper foundation has been laid that calls for the conclusion of the witness; and on the ground that the question has been asked and answered.

The MASTER: He may answer.

A. Whatever is required to keep the trade good.

Q. Who fixes the amount?

A. I don't know that it has ever been fixed.

Q. Well, who determines the amount that is charged in these statements for remargin?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness and in the absence of showing that there is any written agreement with the Hammond Elevator Company determining the amount, it is incompetent and not the best evidence.

The MASTER: He may answer.

A. I presume the party that makes it.

Q. Well, who is that party?

195 A. The Hammond Elevator Company.

Q. Well, in case the Hammond Elevator Company determines in the trade represented by Exhibit 1 that a remargin is required does that trade figure again upon the statements received by you from the Hammond Elevator Company each morning?

A. Yes, sir.

Q. In what way?

A. It is charged on the statement.

Q. Is the number given of the trade?

A. Yes, sir.

Q. And what else is given?

A. The amount of money.

Q. Is anything else given beyond the number and the amount of money in the statement?

A. No, sir.

Q. Now when a customer gives the order to close this trade or you write an order to close it because of his failure to deposit further margins, and the order is sent forward by the telegraph operator and returns to you with a ring around it, in the manner you have described, giving the price within the ring, does that closing transaction appear upon the statement received by you the next morning from the Hammond Elevator Company?

Mr. WHITMAN: I object to that on the ground that the question is leading and suggestive and argumentative, and on the ground that it assumes matters not appearing from the testimony, and incorporates within itself conclusions of counsel from the testimony given.

The MASTER: You may answer.

A. Read the question.

(Question read.)

A. Yes, sir.

Q. Well, what appears on that statement as respects that transaction?

A. Why the number.

Q. 573?

A. Yes, sir.

Q. In this transaction, what else?

A. The amount of money coming back.

196 Q. What do you mean by the amount of money coming back?

A. I mean the amount they return to us.

Q. How is that amount ascertained?

A. By the figures.

Q. By what figures?

A. What do you mean? How is it arrived at?
Q. Yes?
A. Why, they take the buying and the closing price.
Q. What?
A. They take the buying and the closing price and figure the difference.
Q. Then the profit and the loss in the transaction is entered upon this statement, is it?
A. Yes, sir.
Q. Does the price figure in the statement?
A. I really don't know.
Q. Does that help to refresh your recollection? (Handing witness a paper.)

Mr. WHITMAN: Counsel offers to show the witness a paper dated Hammond, Indiana, 11/9/03 and purporting to be a statement from the Hammond Elevator Company to A. H. Babb, Peoria, Illinois, I object to the paper being shown to the witness to refresh his recollection, on the ground that no proper foundation has been laid for that purpose. It appears on its face to be a statement in which this witness is in no wise party and that it does not appear but that the paper itself is a forgery. No proof of its character or what it is before the court, and I ask to have it marked for identification for the purpose of saving my objection on it, and object to any examination upon it or it being shown to the witness until it is marked for identification.

The MASTER: How do you want it marked, Mr. Whitman?

Mr. WHITMAN: I suggest that it be marked 'Complainant's Exhibit 1, for identification' of this date. That is the practice as I know it.

The MASTER: It has not been introduced in evidence.

Mr. WHITMAN: As I understand the practice that I have followed through my short career, I have a written instrument I want to ask the witness about. I have it marked such and such for identification; if it never goes into evidence, that is as far as it goes, but it is identified and is properly on record. If it does go into evidence it may go in as Exhibit B or C or whatever it is.

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The MASTER: That is not the method that is pursued so far as I know in this court. I will put the master's initials on it if you want that done.

Mr. WHITMAN: The instrument is further marked "W. M. B." by the master in the upper right hand corner, and I withdraw my objection so far as based wholly on the fact the paper was not marked for identification. I don't see by what possibility this witness' recollection can be refreshed by an unidentified mongrel instrument produced in court, that has no standing in any way, shape or manner, not made by this witness, that he is not party to.

The MASTER: Now let me ask you, if the witness by looking at that paper should happen to recognize the fact that it is the same

form of paper that he is accustomed to receive, do you think that that would not refresh his recollection?

Mr. WHITMAN: I would say, your honor, that there is only one thing a man has got a right to refresh his recollection from, and that is a writing he made himself.

The MASTER: That is not the question. You said it could not possibly refresh his recollection.

Mr. WHITMAN: No, it could not.

The MASTER: Well, I differ with you.

Mr. WHITMAN: I was talking about what a witness could do within the rules of law to refresh his recollection. I don't say what impression it may create upon him.

(Question read as follows: "Does that help to refresh your recollection?")

198 Mr. WHITMAN: Now before the witness answers, I would like to have the record show that over my objection he did take the document identified, and look at it.

(Record read.)

A. The closing price does.

Mr. WHITMAN: I move to strike out the answer of the witness as not responsive.

The MASTER: It may stand.

Mr. WHITMAN: I move to strike out the answer of the witness on the ground it is based upon the instrument referred to in my last objection, marked W. M. B. in the upper right hand corner improperly exhibited to him for the purpose of refreshing his recollection, and no proper foundation laid.

The MASTER: The motion is overruled.

Q. Now in the trade what would appear in this statement the next day after closing besides the number of the trade and the price at which the trade had been closed?

A. The amount of money returned to us.

Q. Under what heading in the statement if any would the price at which the trade was closed be inserted?

A. Credit.

Q. What?

A. Credit.

Q. Look at the statement please and see——

Mr. WHITMAN: I object. What statement are you referring — now that you want him to look at?

—. Look at the statement you have already been handed and see if that refreshes your recollection.

Mr. WHITMAN: I want to object, your honor, counsel offers to show the witness the statement referred to before here, marked "W. M. B." in the upper right hand corner.

I object again to the witness being allowed to refresh his recollection as to the paper, no proper foundation laid for it.

199 The MASTER: The objection is overruled.

Mr. ROBBINS: How many times do you have to make an objection to make it good?

Mr. BROWN: Pretty nearly all the time to make it good up here.

The MASTER: I don't think that is called for Mr. Brown.

The WITNESS: Why I thought I answered the question before that.

(Record read.)

A. Do you mean the price it was closed at? Bought and sold.

Q. What did you say was entered in the statement of a closed transaction besides the number and the price at which the trade was closed?

Mr. WHITMAN: I object. That has already been asked and answered. It is merely asking the witness what he testified.

The MASTER: The objection is overruled.

A. What is the question?

(Question read.)

A. The amount of money sent them on the trade and the amount coming back after it is closed.

Q. Now under what column heading would be entered the amount of money you had sent them?

A. Payments made.

Q. Now what do you mean by the amount of money you sent them? Do you send them a particular amount on each trade?

A. The particular amount on each particular trade.

Q. What?

A. The particular amount on each particular trade.

Q. Do you send them a particular amount on each particular trade?

A. Certainly.

Q. How is that done?

A. I don't know what you mean.

Q. Well, what is the manner in which you send them a particular amount on a particular trade?

A. Whatever amount is required on a trade we send them.

Q. How do you send it to them?

A. Well, that is—there is a long way of getting round to that many different ways.

200 Q. Well, explain it.

A. Well, if we owe them money at the close of the day we figure up the totals of all the trades, those various transactions, debtor and credit both. If the net result is in their favor we deposit it in the bank to their credit. If it is in our favor they send us a check.

Q. And that is what you mean when you say a particular amount is sent them on a particular trade, is it?

A. Each particular amount figures in the total.

Q. Well, is not the amount that you have sent them on a particular trade the amount that is charged up either as original margin or as remargin when a trade is made?

A. Yes, sir.

Q. So that under the column headed 'Payments made' the amount is inserted which is the total of the amounts charged against the trade as original margin or as remargin in previous statements sent by the Hammond Elevator Company to you?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now what other figures are entered in the statement of a closed transaction?

A. That is all.

Q. Well, you mentioned another I want to ask you about more particularly. What was that?

A. The amount coming back to us.

Q. The result of the transaction?

A. Yes.

Q. Which is determined by deducting one price from the other?

A. Yes.

Q. And under what heading is that placed in the statement?

A. Credit.

Q. Under a column headed credit?

A. Yes, sir.

Q. How do the payments made by way of margins figure if at all, in arriving at the result of the transaction and ascertaining the amount to be put under the heading credit?

A. Read that please.

(Question read.)

A. That is too deep for me. I don't quite get it.

(Question read.)

A. They don't figure in it.

201 Q. Well, if the difference between the purchasing price and the selling price is $25 and $50 has been deposited on margins, what would be the amount inserted in the credit column?

A. $25.

Q. If the $25 was a profit, what would be the amount in the credit column?

A. It would be $25 plus——

Q. The $50?

A. Plus what has been deposited on it.

Q. So that in the case specified it would be $75.

A. Yes.

Q. If there was a $25 loss then the amount in the credit column would be $25?

A. Yes, sir.

Q. So that the amounts deposited by way of margins do enter into the ascertainment of the price—the figures inserted in the credit column?

Mr. WHITMAN: I object to that as calling for a conclusion and argumentative.

The MASTER: You may answer.

A. I never look at the payments made.

Mr. ROBBINS: Read it.

(Question read.)

Mr. WHITMAN: I object to the question being reread to the witness on the ground it has been asked and answered.

The MASTER: You may answer.

A. I presume they do, but we never pay any attention to it.

Q. Are the trades that are opened and entered upon these statements as open trades intermixed with the trades that are closed and are entered upon these statements?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness and argumentative and leading and unintelligible.

The MASTER: I wish you would read that to me.

(Question read.)

The MASTER: He may answer.

A. Are they intermixed, did you ask?

202 Q. Yes, entered in the same column, or are they entered in separate parts?

A. Trades that are opened and trades that are closed.

Q. Yes?

A. No.

Q. Well, explain how the statement is kept with reference to that?

A. One is a debit and the other is a credit.

Q. Is half of the statement assigned to open trades and the other half to closed trades?

Mr. WHITMAN: I object to that as immaterial and irrelevant and on the ground that it is not the best evidence of the contents of the instrument. I think that question brings the counsel well up against the proposition that he ought to have the instrument here.

The MASTER: He may answer.

(Question read.)

A. Yes, sir.

Q. Under what column are the open trades entered?

Mr. WHITMAN: I object to that, your honor, on the ground it does not appear that this paper is in columns at all.

The MASTER: Let him answer.

A. On the debtor side.
Q. Under what hearing are the closed trades entered?
A. They are on the credit side.
Q. Now what other items figures on these statements besides those you have already detailed?
A. The charge for quotation service.
Q. How is that charge ascertained?
A. So much per share.
Q. How much per share?
A. 6¼ cents a share.
Q. How much on ten shares?
A. 62½ cents.
Q. Is that figured on all the shares of stock?
A. And all those closed, yes.
Q. What?
A. And all those closed.
203 Q. It is figured on the number of shares in the closed transaction, is it?
A. Yes, sir.
Q. Is the charge made before the transaction is closed?
A. No, sir.
Q. Now how is the amount ascertained in a given statement covering this item?
A. I don't know as it shows on the statement how it is arrived at.
Q. I am not asking whether it shows in the statement, but I am asking how it is figured on the statement?

Mr. WHITMAN: I object to that on the ground it appears on the face of the statement it is not figured there.

Q. What relation does it have to the number of shares on the statement in the closed transaction?

Mr. WHITMAN: I object. That has already been asked and answered.
The MASTER: I think he has answered that, Mr. Robbins.
Mr. ROBBINS: Well, I don't know that he has answered that it is figured on all the transactions.
The MASTER: All closed transactions, I thought he did.
Mr. ROBBINS: If I thought that was clear I would not ask the question.
The MASTER: Ask him if it is charged on all closed transactions?
Mr. ROBBINS: Read the question please.
Mr. WHITMAN: I object to that. The court has already indicated what the question should be.
Mr. ROBBINS: Read the question.
Mr. WHITMAN: I object.
Mr. ROBBINS: Well, he may read the question but the witness need not answer it.
(Question read.)

Q. Is this item figured on all the shares shown in the statement as closed transactions?

A. Yes, sir.

Q. Is it based upon 6½ cents per share of all the shares shown in the closed transactions—all closed transactions shown on the statement?

A. 6¼ cents.

204 Q. 6¼ cents?

A. Yes, sir.

Q. Will you produce a statement—one of these statements that you received from the Hammond Elevator Company, containing open trades closed trades and this charge of 6¼ cents per share on closed trades?

Mr. WHITMAN: I object to the question, your honor, on the ground that its only force must be to serve by way of impeachment of the witness to show interest possibly upon his refusal to furnish the statements without having his mileage and expenses paid to bring it up here.

The MASTER: He may answer.

A. Yes.

Q. This 6¼ cents per share represents the amount which the Hammond Elevator Company received from you on these transactions does it?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness and on the ground he has already testified. The question has been asked and he has answered it, and the ground has been already gone over.

The MASTER: The objection is sustained.

Q. Who receives the 6¼ cents a share you have been testifying to?

A. I presume the Hammond Elevator Company.

Q. From whom?

A. From us.

Q. Now, what other sums does the Hammond Elevator Company receive from you in these transactions?

Mr. WHITMAN: I object to the question as leading.

Q. Other than margins or remargins?

Mr. WHITMAN: I object to the question as leading.

The MASTER: He may answer.

A. I don't know what you mean.

Q. Do you pay the Hammond Elevator Company anything

205 else besides this 6¼ cents per share on account of this business?

A. Yes, sir.

Q. What?

A. $50 a month.

Q. $50 a month? Do you pay them anything else?
A. No, sir.
Q. Do you pay them anything on the orders that are sent forward but not filled?

Mr. WHITMAN: I object to that as calling for a conclusion from the witness and on the ground that it has been asked and answered and on the ground that it has been all gone over.
The MASTER: He may answer.

A. What is that question?

(Question read.)

A. No, sir.
Q. I want to take up the question of this deposit of these moneys, the payment of these moneys by you to the Hammond Elevator Company. How was that done.
Mr. WHITMAN: What moneys are you talking about, Mr. Robbins?
Q. Any moneys.
A. What do you mean?
Q. Do you have occasion to pay the Hammond Elevator Company any moneys?
A. Yes, sir.
Q. In connection with this man. Now, how is it done?
A. We deposit it *to* the bank to their credit.
Q. What bank?
A. The German American national bank.
Q. *What* is that located?
A. At Aurora, Illinois.
Q. In whose name is that bank account?
A. Their own.
Q. Then the Hammond Elevator Company has the bank account in this bank at Aurora, Illinois?
A. Yes, sir.
Q. How often do you deposit for them money in that bank?

Mr. WHITMAN: I object to that as assuming something that has not been testified to by the witness. He never said he de-
206 posited for them. He said he deposited to their credit. Now, that is the very thing counsel is trying to prove that this man has been acting as agent for the Hammond Elevator Company. I should think counsel would blush to put the question.
The MASTER: Let the question read—"to their credit."
Mr. ROBBINS: Read the question as amended.
(Question so read.)

A. As a rule when they have anything coming from us.
Q. Well, as a rule how often?
A. There is no rule to go by.
Q. How does the deposit of money depend upon the receipt of a

statement showing a debtor balance owed by you to the Hammond Elevator Company?

Mr. WHITMAN: I object to the question as leading, unintelligible, and calling for the conclusion of the witness.
The MASTER: I think it is incompetent.

Q. Do you deposit money in this bank for the credit of the Hammond Elevator Company every time you receive a statement from them showing a debit balance?
A. Not necessarily; if the amount is very small we do not.
Q. Well, when the amount is not very small, how is it?
A. We deposit it to their credit.
Q. What amount? The amount showed by the debit balance?
A. Yes, sir.
Q. When the amount is small what became of it?
A. We just owe it to them.
Q. And it is entered—is it added to the debit balance of a subsequent statement and then deposited?
A. Yes, sir.
Q. So that except when the amount is very small you deposit every day in this bank to the credit of the Hammond Elevator Company the amount of the debit balance shown in the statement received that morning from the Hammond Elevator Company?

207 Mr. WHITMAN: I object to the question as leading, argumentative, and on the ground that it has been asked and answered before and on the ground that it has already been covered by a statement given by the witness.
The MASTER: He may answer.

A. Not the debit balance, the net debit balance if it is a debit, the net balance on the statement if it is a debit.
Q. I mean the net debit balance.

Mr. WHITMAN: You cannot expect the witness to know what you mean by your question.

A. The net balance if it is a debit.
Q. The net balance if it is a debit?
A. Yes, sir.
Q. And that you do every day except when the amount is small.

Mr. WHITMAN: I object. He has answered that three times.
The MASTER: Let him answer.

A. Yes.
Q. How is it when there is a credit balance shown on the statement?
A. If the amount is of any size at all they send us a check.
Q. With the statement?
A. Yes sir.

Q. When the amount is not of any size what happens?
A. They simply owe it to us.
Q. Well, is that included—added to the credit balance of any subsequent statement?
A. Yes, sir.
Q. Is this true always when you receive these statements?
A. Yes, sir.
Q. Upon the receipt of each statement there comes either a check from them or a deposit by you of the same amount shown as a debit or a credit here in the statement?

Mr. WHITMAN: I object to that on the ground that it calls for the conclusion of the witness, argumentative and that the substance of the question has been in another form asked and answered by the witness a number of times already.
208 The MASTER: He may answer.

A. Yes.
Q. Does your testimony here define the general course of business between you and the Hammond Elevator Company?

Mr. HAMMOND: I object to that as calling for the conclusion of the witness and argumentative.
The MASTER: Answer.

A. Yes, sir.
Q. All the transactions are carried on in the same way as you have described as to this particular transaction?

Mr. WHITMAN: I object to that as calling for a conclusion and argumentative and having been asked in form and substance and answered by the witness before.
The MASTER: Let him answer.
Mr. WHITMAN: What is the difference between this question and the one he asked before?
The MASTER: Well, you can tell by reading the record.

A. What is the question?

(Question read.)

A. Yes, sir.

Mr. WHITMAN: All the transactions are just like this transaction and each transaction is like the other and the particular transaction he has described is one of all the transactions.

Q. Is there any other class of business or transactions that you have with the Hammond Elevator Company except those you have now described?

Mr. WHITMAN: I object to that, and call the court's attention to the fact that counsel has now asked the witness whether the transaction he has described is typical of all his transactions with the

Hammond Elevator Company. He has in the first place examined him as to a transaction, a typical transaction, the very basic transaction in his whole examination. He has then asked him
209 whether the transactions described show the general character of a all business with the company and now he is going to ask him if he has any other business, if that is not covering the same ground over again I don't know what is.

The MASTER: I think that has been covered, Mr. Robbins.

Q. Does your testimony as to the manner of transacting business between you and the Hammond Elevator Company relate to all the time that you have—does it represent the course of business between you during all the time that you have been doing business with the Hammond Elevator Company since January 1st, 1903?

A. We have not changed our methods at all.

Q. Since that time?

A. Since that time.

Q. Since that time have you had business with any other company or person?

A. Yes, sir.

Q. What kind of business?

A. Bought stocks through other houses.

Q. Well, to what extent?

A. Well, that is pretty hard to tell; I would have to look up my books to see how much.

Q. Well, approximately?

Mr. WHITMAN: I object to that — immaterial and irrelevant.

The MASTER: I think he may answer the question.

Mr. WHITMAN: That is the fact, he is not the agent of anybody else goes to show he is the agent of the Hammond Elevator Company. Then counsel could come in and by process of elimination show he is the agent.

(Question read.)

A. Oh, it runs into the hundreds of shares, I would have to see the books to refresh my memory. We deal where we see fit.

Q. Can you tell by looking at your books?

A. Well not all of them.

Q. Well, during recess, during the adjournment, when you go for this statement that you are to produce——

Mr. WHITMAN: When he goes where.

Q. Will you please look at your books and answer—be prepared to answer the question of the extent of your business with
210 other persons than the Hammond Elevator Company and the number of persons with whom you have had those transactions between January 1st, 1903—and—what is the date of the service of this——

Mr. WHITMAN: He was served in 1902. About five months before the Hammond Elevator Company came into existence. That is according to the marshal's return.

Mr. ROBBINS: July 10th, 1903?

Mr. WHITMAN: You don't find 1903 there?

Mr. ROBBINS: I don't believe we can go any further until the witness——

Mr. WHITMAN: Now, I object to the question, or if it is not a question I object to the instruction. If it is a question I object to it on the ground it amounts to an instruction to this witness to refresh his recollection out of court from papers or books without their being introduced here, and without my being allowed to examine them and without any proof of the books and I object to the witness so refreshing his recollection and shall object to his giving any answer to the questions based on such proceedings, and think that the court should instruct the witness that he has no right to refer to any written instrument for the purpose of refreshing his recollection except when advised so to do by the court here in court.

The MASTER: I think the witness may refresh his recollection.

Mr. WHITMAN: What opportunity am I going to have your honor to examine the instrument or object, make a preliminary objection to his referring to the memorandum or books if the books are not produced here if they are examined outside of court? The question is fairly presented your honor, by the very situation now.

Mr. ROBBINS: I would like to ask the witness one question while I remember it.

Q. Do you pay anybody than the Hammond Elevator
211 Company for your New York stock quotations?

A. No.

Thereupon the further taking of evidence in this case was continued until 2 o'clock p. m. November 19th, 1903.

NOVEMBER 19TH, 1903—2 p. m.

Met pursuant to adjournment.

Present, as before.

J. L. DICKES, was further examined by Mr. Robbins as follows:

Q. Mr. Dickes, have you brought with you one of the statements that we asked about?

A. I did not bring one; I brought two. Haven't had enough business in two weeks to have one that had all three items on it.

Mr. ROBBINS: I offer this in evidence.

The MASTER: Let us state in the evidence what it is, Mr. Robbins.

Mr. ROBBINS: It is one of the statements called for.

The MASTER: The complainant offers in evidence a statement of the Hammond Elevator Company, dated 11/11, 1903, to Battle & Dickes, Aurora, Illinois.

Mr. WHITMAN: I object to the offer as made on the ground that the whole document should go in evidence. It was called for and produced by the witness on its face constituting evidently one instrument, or at least one communication. The parts should be considered in connection with the whole, and insist that the matter on the reverse side of the sheet should also be offered.

The MASTER: It will be admitted in evidence and marked Complainant's Exhibit No. 2.

Complainant's Exhibit 2 is in words and figures following to-wit:

212 Q. What do the figures 343 under the word No. mean on this statement?

A. I will have to see it. (After examining document.) It is the number of the trade.

Q. What does the 10 under the word debtor, Dr. mean next to that number?

A. $10.

Q. And what does it mean?

A. Trade of 10 shares of stock made that day.

Q. Why do you say it is a trade of 10 shares of stock?

A. Because we do not trade in anything else.

Q. Why do you say 10 shares instead of 20 shares?

A. Why, the 10 indicates if it was 20 shares it ould be $20.

Q. Well, the $10 is the margin put up on the le, is it not?

A. First deposit.

Q. What do the figures 342 under the word No. mean in that exhibit?

Mr. WHITMAN: I have already interposed a general objection your honor, This ground has already been covered on the examination of the witness. He has been interrogated as to these statements as to what every figure in every column means over my objection that the interrogation should be addressed to a specific sheet, and if that examination is allowed to stand the witness ought not to go over the same ground in connection with a specific statement. Either the examination before is effective or it is not. As long as the court holds that it is I do not think we ought to go all over the same ground with this sheet.

The MASTER: He may answer.

A. Numbered.

Q. Number of what?

A. Of the trade.

Q. Why is it placed in that column instead of the column in which the number 342 is in?

213 A. Because it refers to a trade that calls for a remargin.

Q. What does the 10 mean opposite that 342?

A. $10.

Q. Does that indicate a remargin of $10 on that trade?
A. Yes, sir.
Q. What class of trades are placed upon the left hand half of that sheet?

Mr. WHITMAN: I object to that on the ground the question has been already asked and answered.
The MASTER: He may answer.

A. Trades that are closed.
Q. Closed trades. Under the word No. the number of the closed trade is put, is it?

Mr. WHITMAN: I object to that on the ground that the subject matter of the question has already been covered on the previous examination of the witness and the same question asked and answered.
The MASTER: Objection overruled.

A. Yes, sir.
Q. And under the words bought and sold the price at which a commodity is bought or sold or the closing price, which?
A. The closing price.

Mr. WHITMAN: I call your honor'- attention to the fact that on this side of the sheet, on this particular sheet about which counsel is now examining the witness there is not a figure so that his whole examination is simply to ask what he brought out of the witness before, *before*, not in connection with any sheet. Now, in connection with the blank sheet I do not see any force in it.
Tha MASTER: It makes it a little plainer, that is all.

Q. In the column under payments made what is inserted?
A. The amount deposited under that trade.
Q. And under credit what is shown?
A. The amount returned.
Q. The balance of the deposit with the profit in the transaction added or the loss deducted.
214 A. Yes, sir.
Q. Do these sheets also indicate this payment per share that the Hammond Elevator Company retains, 6¼ cents a share?
A. Yes, sir.
Q. Upon what side of the sheet, the debit or the credit side?
A. The debit.
Q. Do these statements that come to you frequently contain entries of trades on both sides of the sheet?
A. Yes, sir.
Q. One sheet contains all the trades on the day the sheet is made, does it?
A. Yes, sir.

Q. With the balance between them showing the amount you owe, or is owed you as the result of the transactions that day?

A. Yes, sir.

Q. And every trade entered upon such a sheet is always entered with its number?

A. Yes, sir.

Q. And that is all there is upon the sheet to identify the trade?

A. Yes, sir.

Q. And as soon as a trade is opened and entered upon this sheet your account is debited with the agreed margin?

A. Yes, sir.

Q. Which in the case of stocks is $1 per share?

A. Yes, sir.

Q. What is the volume of your business with the Hammond Elevator Company?

Mr. WHITMAN: I object to that as immaterial.

The MASTER: The objection is overruled.

A. What time do you mean?

A. Well, start, say, for this year, up to the 9th of July, 1903.

A. As near as I could remember it would not average 1000 shares per month.

Q. It would not average 1000 shares a month? How many transactions will it average?

A. I am utterly unable to state that But I can simply say
215 that the majority are 10 and 20 share lots. Business has been—one week we had 10 shares of stock.

Q. Business had been pretty dull lately?

A. Very, the whole year.

Q. I asked you to ascertain the extent of business that you did with any other concern than the Hammond Elevator Company, have you done so?

A. Well, as near—my partner and I talked it over, and as near as we could figure it up, up to July 10, about 400 shares. It has been more lately.

Q. With whom do you do that business?

A. Well, we bought stocks of Henry Clews & Company of New York and Osborne, Holligan & Company, Chicago. We have bought stocks of some of the banks; we have got stocks of our own. We have sold to the banks.

Q. *What* character of transactions are those transactions where you have been investing your money in stocks?

A. No.

Q. Or buying stocks on your own account in some cases?

A. But we have bought for customers in New York and Chicago.

Q. What do you mean by buying for your customers?

A. Why, they would come in and give us an order to buy them 10, 20 and even as high as 100 shares of stock, and the rates of the

Hammond Elevator Company were not satisfactory to us, and we applied to some persons who would give us better terms.

Q. In those cases did you receive the stocks from New York and deliver them to your customers?

A. Yes, sir.

Q. They were what you would call investment orders, were they not?

A. Yes, sir.

Q. And not orders on margins?

A. They were investment orders.

Q. And these transactions that we have been talking about here are what you would call transactions on margins?

A. Not in all cases. In fact, we have bought more for delivery of the Hammond Elevator Company than we have of other people.

216 Q. Well, is not all your business transactions in margins such as are entered on this sheet done with the Hammond Elevator Company?

A. Yes, sir.

Q. And you have no private wire running into your office from any other concern than the Hammond Elevator Company?

A. No, sir.

Q. When those deposits are made by you in the bank at Aurora for the credit of the Hammond Elevator Company——

A. I wish to state right here that I made a mistake yesterday I meant to call your attention before I got through. We do not any longer deposit to the credit of the Hammond Elevator Company. We deposit to the credit of the First National Bank of Hammond, Indiana. But there has been so little of that done lately that it slipped my mind.

Q. When was that changed?

A. Oh, two or three months ago. I was away a greater portion of that time and it happened while I was away.

Q. Before July 10th, you did deposit to the credit of the Hammond Elevator Company?

A. Yes.

Q. Now, when you made those deposits to the Hammond Elevator Company, what notice did you send to the Hammond Elevator Company?

A. We would send them a duplicate deposit slip from the bank. The bank would send them a telegram.

Q. Would you write out a telegram for the bank to send?

A. No, sir.

Q. Would you take the telegram and send it?

A. I have, as an accommodation, carried it over. If they were busy, they would say, take that along. I would be right by that office.

Q. And that notice goes every night, does it, when you make a deposit?

A. Yes, at least, if not that night, before the opening next morning.

217 Q. Specifying the amount of the deposit?

A. Yes, sir.

Q. Did you say yesterday—I don't recall that you did—what bank the checks were drawn upon that you received with these statements when they show a credit to you?

A. At that time they were drawn on the German American as a rule, not always.

Q. By the Hammond Elevator Company?

A. Yes, sir.

Q. All the transactions that you had with the Hammond Elevator Company or had with them for the six months prior to July 10th, 1903, were entered on these sheets in the same way that you have described?

A. Yes, sir.

Mr. WHITMAN: I objected to that question four times before we closed.

Cross-examination

By Mr. WHITMAN:

Q. Mr. Dickes, can you state any more definitely how long it has been since you quit depositing to the Hammond Elevator Company's credit and began depositing to the credit of the Hammond bank?

A. No, I could not.

Q. Can you say whether or not you began to deposit to the bank's credit before or after July 10th?

A. I think it was afterwards but I could not say positively. I was away for a long time.

Q. You say that you sent messages for the bank occasionally to the Hammond Elevator Company as an accommodation, as you went right by the office? What office do you go by? What office do you refer to?

218 A. The Western Union Telegraph Company.

Q. You are not a telegraph operator, Mr. Dickes?

A. No, sir.

Q. Have you any means of knowing whether during the hours that you use this wire to the Hammond Elevator Company, there does not other business pass—other messages pass over that wire to other points on the wire than to your office?

A. Other business?

Q. Read the question.

(Question read.)

A. Well, I know there is other business.

Q. Then it is not true that you had the exclusive use of that wire

or even that portion of the wire which runs from your office to the Hammond Elevator Company during your business hours?

A. No, sir.

Q. When a customer comes in there and you speak of getting a written order from him, who is it reduces the order to writing? The customer or yourself? Who is it writes the customer's order down? You or the customer?

A. Both.

Q. He hands you a written order?

A. Yes, sir, sometimes he tells us and we write it.

Q. Now, does that order when written contain the name of your customer?

A. It contains the name, but it is never sent in.

Q. Now, when you hand that order to your telegraph operator what do you mean that the telegraph operator does when you say he sends the order in to the Hammond Elevator Company? What does the operator do so far as you know?

A. Well, he sends the order, and either he or the Hammond people, but I think it is our operator, marks a number. The name is never sent in.

Q. You hand this written order to the operator. Is that right?

A. Yes.

Q. That written order consists of all that is written on that paper?

A. Yes.

219 Q. Does the operator send all that is written on that paper to the Hammond Elevator Company?

A. I don't think so.

Q. What is there on that written order that he does not send in to the Hammond Elevator Company?

A. A great deal.

Q. Well, tell me what it is?

A. Well, in case a customer wishes to buy 10 shares of stock I understand that he words it something like this; "Will buy of you 10 shares of such and such stock at such a price."

Q. The operator does?

A. Either the number is sent first or the number is sent after.

Q. When the customer gives you an order he gives you an order by which he directs you to buy for him? Is that right?

A. Yes, sir.

Q. You do not send any order. You have—well, let me ask you this; Your telegraph operator there is acting there under instructions from your firm?

A. Yes, sir.

Q. And whe-her you recall definitely specific instructions to him or not, the general course on the part of the operator in the usual course of your business there would be in conformity of your instructions, is that right?

A. Yes.

Q. Now, what are your standing instructions to the telegraph

operator as to what he is to do when you ha-d him an order? State as nearly as you can your understanding?

Mr. ROBBINS: Well, state the conversation that you had with any operator?

Mr. WHITMAN: Oh, no. In the usual course of business a standing order. It is like these instruments.

Mr. ROBBINS: If he gave him instructions he must at one time. He does not continuously instruct him. He gave him instructions about telegrams, and that ought to be given. As to what he said and whom he said it to.

A. I don't remember every giving him any instructions. If he every got any instructions he got them from Mr. Battle before I entered the firm.

220 Q. The first communication that you ever had or your firm ever had with the Hammond Elevator Com-any here was over this private wire, was it not?

A. Yes, sir.

Q. And was one of your orders?

A. Yes, sir.

Q. After the first day of business that you did with the Hammond Elevator Company you received from the Hammond Elevator Company a statement of that first day's business like the statement marked Complainant's Exhibit 2, is that right?

A. Yes, sir.

Q. That was the first written communication that you ever received from the Hammond Elevator Company?

A. Yes, sir.

Q. Did that first statement and do all the statements like this statement, Complainant's Exhibit 2, bear the printed matter appearing on the reverse side of Complainant's Exhibit 2?

A. Yes, sir.

Q. Have you ever looked at that printed matter?

A. Yes, sir.

Q. Do you know in a general way what it contains?

A. I think so.

Q. After the receipt of the first statement like Complainant's Exhibit 2, on the second day of business with the Hammond Elevator Company containing the same printed matter appearing on the back of Complainant's Exhibit 2, you proceeded to send in further orders and continued to do business?

A. Yes, sir.

Q. And the only understanding or agreement that you ever had, the only communication that you ever had with the Hammond Elevator Company defining your relations to the Hammond Elevator Company were the actual transactions of business and the receipt of these statements showing this printed matter?

A. Yes, sir.

Mr. WHITMAN: I offer in evidence, not waiving my objection to complainant's offer of Complainant's Exhibit 2, the whole of the paper marked Complainant's Exhibit 2, both the page upon which the matter written in ink appears and the back of the page headed "Form of agreement assented to by all who deal with the Hammond Elevator Company, incorporated," as Defendant's Exhibit 1.

221 Mr. ROBBINS: That document should not be copied in twice. It is in once. I presume when it is offered it is all in.

Mr. WHITMAN: With that understanding, and I would like to have the record show it, of course when I made the objection that it may all go in, the objection was overruled, and I supposed counsel was only offering the front of the page. With the understanding that both sides of the page are offered by counsel I withdraw my offer.

The MASTER: I understood the paper itself was offered When a paper is offered without any reservation that includes the entire paper, as I understand it?

Mr. WHITMAN: I think to be perfectly sure of the matter I will let my offer stand as made, offering the back of this Complainant's Exhibit 2 as Defendant's Exhibit 1.

The MASTER: Very well; I will admit it and mark it Defendant's Exhibit 1. Now, let me understand exactly what you are offering. Are you offering the entire paper or only the reverse of it?

Mr. WHITMAN: I am offering the entire paper, as well as the back. Then as soon as that offer is passed upon I propose to offer the back exclusively.

The MASTER: Well, I have admitted the entire paper as Defendant's Exhibit 1.

Mr. ROBBINS: Well, I think in making up the record it should be stated it is the same as Complainant's Exhibit 3, or whatever it is, so as to prevent any confusion about it. I don't think we should enlarge this record by offering the whole paper over twice.

The MASTER: It seems to me——

Mr. WHITMAN: It would have been very easy to obviated all this if counsel had volunteered that statement when I made the

222 first objection, instead of sitting here like a clam. All I wanted was to get this in.

The MASTER: Now, explain to me, Mr. Whitman, if the entire paper is admitted as Defendant's Exhibit 1, what is the object or advantage in again offering the back of it?

Mr. WHITMAN: I do not propose to if there are no objections to my offer of the whole of it.

The MASTER: I haven't heard any.

Q. Mr. Dickes, in your transactions with your customers, in which you—on occasions where you take their orders without requiring a deposit of a margin, do you ever lose anything on your customers?

A. Yes, sir.

Q. Do you then send any statement to the Hammond Elevator

Company or in any way charge up that loss to the Hammond Elevator Company?

A. No, sir.

Q. Were you ever directed orally or in writing by any officer or agent of the Hammond Elevator Company to represent or act to the Hammond Elevator Company in any matter except so far as you may have occasionally taken telegrams and delivered them for the bank there in your town?

A. No, sir.

Q. Do you in any way represent yourself through your customers or to others at your place of business as authorized to act for or as the agent of the Hammond Elevator Company?

A. No, sir.

Q. Did you ever claim that you or your firm—when I say you Mr. Dickes, you understand I mean your firm?

A. No, sir.

Q. You understand, Mr. Dickes, that when I say you I mean your firm, do you?

A. Yes, sir.

Q. Did you or your firm or any member of your firm ever state orally or in writing to the Hammond Elevator Company or any officer or agent of it, or ever make a claim to the Hammond Elevator Company or any officer or agent of it, that you were the agents of the Hammond Elevator Company or authorized to represent the company in any way?

A. No, sir.

223 Q. Mr. Dickes, have you ever been connected in any way with any firm a member of the Board of Trade of the City of Chicago?

A. Yes, sir.

Q. How long ago?

A. About two years and three or four months.

Q. Where?

A. Chicago.

Q. Were you an office man?

A. I was a correspondent of a firm.

Q. What firm?

A. Arthur R. Jones & Company.

Q. Did you receive orders—did you take in orders from their customers?

Mr. ROBBINS: I object to that on the ground it is not material.

Mr. WHITMAN: I withdraw the question.

Q. Are you familiar with the method of receiving and executing orders from customers employed upon the Board of Trade of the City of Chicago?

Mr. ROBBINS: I object to that. What has that got to do with this case. Whether he was the agent or not.

Mr. WHITMAN: Because I propose to show by this witness that the method employed in his transactions with the Hammond Elevator Company is the usual and customary method employed by brokers in stocks and grain in receiving and executing orders from customers on which the broker buys commodities.

Mr. ROBBINS: What has that got to do with it? Suppose it was the method. That does not decide whether the man was agent or not.

The MASTER: I think I will let him answer.

(Question read.)

A. Yes, sir.

Q. Where was the office of this concern where you were? Here in Chicago?

A. I was, yes, sir.

Q. Where was their own office?

A. Their own office was in—I think it was the Mallers
224 building on La Salle street, corner of Quincy.

Q. Was that where you were?

A. No, sir.

Q. Where were you?

A. Great Northern building, in the Great Northern hotel.

Q. Then you didn't have anything to do with the filling of orders received from your customers?

A. I don't understand you.

Q. I say, then you were not a part of the office force at the principal office of the concern, were you?

A. No, sir.

Redirect examination by Mr. ROBBINS:

Q. These other places that you say you know are on this same wire. Were they persons who had the same relations to the Hammond Elevator Company that you have?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

Mr. ROBBINS: He says he knows.

Mr. ROBBINS: He did not, as a matter of fact, say that. He said he knew there was other business ran over the wire.

The MASTER: I think that is objectionable as calling for a conclusion.

Q. What do you know about these other places on this wire?

A. I only know from hearsay that there are other offices.

Q. Offices of whom?

Mr. WHITMAN: I object to the witness stating what he only knows from hearsay.

Q. How do you know there were other offices upon this wire?

The MASTER: I think he may answer.

A. From hearsay.

Q. Is that the only basis of knowledge that you had when you answered Mr. Whitman about it?

Mr. WHITMAN: I object to that on the ground he is stating something that is not in the record.

225 The MASTER: He may answer.

A. Why yes, I never was in one, so I don't know.

Q. Did you ever see a telegram such as is sent over those wires? Are they ever written out?

A. We have had some sent to us.

Q. Did you ever see a telegram written out which said "Will buy of you." With the words "Will" and "of you" inserted in the telegram?

A. I never saw one, but I understand that is the way they are sent.

Q. You never saw one? You got that from hearsay?

A. Yes, not being an operator.

Q. So you don't know what the wording of a telegram is from your own knowledge?

A. Not from my own knowledge. I am not an operator.

Re-cross examination by Mr. WHITMAN:

Q. Your telegraph operator is there, is he not, to attend to your business, send messages and receive messages sent to you?

A. Yes, sir.

Q. And in the usual course of business that is what he does?

A. Yes.

Q. Have you ever been in your office when your operator was away from his instrument, paying no attention to it, and heard anything passing over the wire?

A. Yes, sir.

Q. Do you know whether or not that was your business?

A. No, sir.

Q. For all you know, there may be messages sent over that wire and through your office that have nothing to do with your business at all, is that so?

A. Yes.

Q. And you have no means of knowing except by glancing at it or by what you are told that you have the exclusive use of that wire during your business hours?

A. That is all.

Mr. ROBBINS: Now, I would like to ask an order on the defendant to produce the leases of the wires running to the office of Battle & Dickes, at Aurora and A. H. Babb——

226 The MASTER: Do you object to producing them, Mr. Whitman?

Mr. WHITMAN: I do not recognize that I have any cause to object. The mere expression on the part of counsel that he would like to ask something from the court or any intimation that he is going to do so does not put me under any obligation to object. My position is, that I do not care to discuss the matter.

The MASTER: Have you asked counsel to produce them, Mr. Robbins?

Mr. ROBBINS: No.

The MASTER: I think first you should ask counsel.

Q. Will you produce all the leases that you have between the Western Union Telegraph Company and the Hammond Elevator Company covering the leases of wires running from the Hammond Elevator Company's office to the office of Babb at Peoria?

Mr. WHITMAN: This is the first time that I ever heard there were such leases.

Mr. ROBBINS: Or Battle & Dickes at Aurora.

Mr. WHITMAN: I don't know of the existence of any such leases.

Mr. ROBBINS: Now, I ask he be ordered to produce any leases in the possession of the defendant covering those wires.

The MASTER: Why, I don't think I can enter such a rule, Mr. Robbins, unless it is first shown that there are leases.

Mr. WHITMAN: I move the court for a rule upon the complainant to close proofs within a short day.

The MASTER: Well, how short a day.

Mr. WHITMAN: Three days.

The MASTER: I don't believe there is any necessity for any such haste in the matter.

Mr. WHITMAN: I don't except that counsel thrashed in here and insisted that testimony be taken and the master's report be made in ten days.

227 The MASTER: Well, he repented of that later.

Mr. WHITMAN: We have closed our matter up very speedily.

The MASTER: What harm is being done to the defendant meanwhile?

Mr. WHITMAN: That is like the suggestion counsel made in the court of appeals, that the injunction does not do us any harm because we deny we had the quotations. That is not the question. When we come into court we have a right to expeditious hearing.

The MASTER: Reasonably so, yes, When do you want to go on Mr. Robbins?

Mr. ROBBINS: Saturday morning at 10 o'clock.

The MASTER: I won't enter a rule now, but if there is any indication of unnecessary delay being made in the case I will enter a rule.

Mr. WHITMAN: Why should we not go on tomorrow?

The MASTER: One reason, I have another matter set in the afternoon. I could give the morning only.

Mr. WHITMAN: I will be very glad to come down here in the

morning. I don't know that we have put in more than half a day at a time on this hearing.

Mr. ROBBINS: Mr. Babb has sent up statements here that only cover grain transactions. He will have to return unless he sends up statements showing stock. He will have to return anyway unless counsel are going to stipulate that they are going to go in.

The MASTER: Well, they have refused to stipulate. I think Saturday morning would be the best time to set it. Saturday morning at 10 o'clock.

Mr. WHITMAN: When I come to think of it, your honor, I have an appointment with a dentist at Waukegan, Saturday morning and I have to take a 11:30 train out of town. I hardly think it would be worth while to come here for an hour and bring Babb in.

228 Mr. ROBBINS: You are so anxious to close the case. You produce those leases and we will close pretty quickly. We are going to get the leases.

Mr. WHITMAN: My anxiety is not to close the case, but to have counsel close it.

The MASTER: Well, is there any possibility of going on tomorrow morning?

Mr. WHITMAN: No, because we cannot get Babb here tomorrow morning, and then I may be in a way to get those leases, I won't know until tomorrow morning.

Mr. BROWN: You ought not to have much trouble. You are attorney for the Western Union Telegraph Company in this court of record.

Mr. WHITMAN: No reason that you should have any trouble in getting any leases that the Western Union are parties to. What difference does it make whether there are any leases or not.

Thereupon the further taking — evidence in this cause was continued until November 24th, 1903, at 10 o'clock a. m.

NOVEMBER 24, 1903—11 o'clock a. m.

Met pursuant to adjournment.
Present as before.

Mr. WHITMAN: Is counsel through with the witness, Mr. Babb?

Mr. ROBBINS: No, I want to look over a little more evidence.

Mr. WHITMAN: Mr. Babb is here, and I object to the withdrawal of Mr. Babb from the witness stand and placing any other witness on the stand until Mr. Babb is closed and I am through with the cross examination.

The MASTER: The objection is overruled.

Mr. WHITMAN: I would like to state further that I have a case pending on the quasi criminal calendar before Judge Tuttle that has been on the call to day and yesterday. I hope to dispose of the matter in half or three quarters of an hour, it may be, but

229 may not be able to and may not be able to come in here this afternoon. It means that Mr. Babb comes back here again.

JOHN E. SCHANK a witness produced in behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. ROBBINS:

Q. What is your name?
A. John E. Schank.
Q. What is your business?
A. I have charge of leased wire matters in the general superintendent's office of the Western Union Telegraph Company.
Q. What do you mean by saying you are in charge of the leased wires?
A. I do not quite understand the question.
Q. Well, what does that include?
A. Work largely of a clerical nature.
Q. Is it a part of your duties to know of the places in the State of Illinois to which the wires leased to The Hammond Elevator Company the defendant in this case, run?
A. Yes, sir.

Mr. WHITMAN: I interpose an objection to that as leading, your honor and as assuming that there are any leased wires, and I move to strike out the answer. I did not hear the question.
The MASTER: I think it may stand.

Q. Will you state to what points in Illinois wires leased by the Western Union Telegraph Company to the defendant in this case The Hammond Elevator Company, run?

Mr. WHITMAN: I object to that as assuming that there are any such leased wires; and there is no evidence to that effect and on the further ground that if there are any leased wires the written contracts are the best evidence until it appears that they are leased by oral lease if leased at all, and on the further ground that the witness has no knowledge except by hearsay on which to base an answer.
230 The MASTER: I will let him answer.

A. Do I understand that to state to what points?
The MASTER: Yes.
A. I cannot do it from memory. If I am allowed to refer to that I can do so.
The MASTER: It depends on the nature of the memorandum, I suppose.
A. A memorandum made from the records.
Q. The records in your charge?
A. Yes.

Mr. WHITMAN: I object to his using any memorandum which are simply copies from original records and object to his using any memoranda which do not appear to be his own original memoranda.

The MASTER: I take it we are not interested in this case in any private wires except those, if any, that run to the offices of the parties that have been served here.

Mr. ROBBINS: Oh, yes, I want to show the extent of the business of this company in Illinois.

The MASTER: I don't think that is competent in this inquiry, Mr. Robbins.

Mr. ROBBINS: I think it shows what the nature of the business of this defendant is, to show the extent of it, the places it covers. There are two questions in the case, the first is the question whether the defendant does a business in Illinois, and the second is the question whether the person served is the agent. The burden of establishing those two facts is upon the plaintiff to sustain the service. Now the two facts are separate. I think we ought to understand fully the extent of this business even as to these particular offices. I think the court should understand the full scope of this company. I shall contend that this drafting of contracts and disclaim of agency, all that is a mere sham. Now in order to get at that the whole question of the workings of this company in the State of Illinois are
231 necessary.

Mr. WHITMAN: What difference does it make if they have a million people that they are communication with?

Mr. ROBBINS: It might make a difference if in twenty or thirty cities of this State, or more, this concern has a systematic way of gathering up business and transmitting it across the line into Indiana over leased wires and there transmits it back to these people. It shows the humbug of the whole scheme.

Mr. WHITMAN: How many would it take to show the humbug, 30 or 31 or 32 or 33 such?

Mr. ROBBINS: That evidence was admitted in the other case too. It is all in here.

Mr. WHITMAN: I do not know what other case counsel is talking about. I am here representing the Hammond Elevator Company.

Mr. ROBBINS: As I remember it, admitted over the objection of counsel I do not know why there should be a separate ruling in each case a different ruling. This is the same witness that gave the names in the other case.

Mr. WHITMAN: I think perhaps the court does not take the law from the other case.

The MASTER: Well, I don't think that evidence is competent. It may have been in the other case, but I don't think it is in this.

Mr. ROBBINS: Well, I will take the ruling of the court on that.

The MASTER: Very well. According to my recollection the service was different in the other case. It was on an officer of the company, if I remember rightly.

Mr. ROBBINS: Who was not claimed to be in this State on business at all. He has lived in this State.

The MASTER: That is true.

Mr. ROBBINS: Well, I will make my question and it can be ruled on.

232 Q. How many points in Illinois do the wires of the Western Union Telegraph Company that are assigned to the Hammond Elevator Company for use during certain hours, run to?

Mr. WHITMAN: I object to the question on the ground that it does not appear that there are any wires of the Western Union Telegraph Company assigned to the Hammond Elevator Company for use during certain hours running anywhere in the State of Illinois, and on the ground it appears that the witness has no knowledge on the subject except by hearsay, and that it is incompetent, immaterial and irrelevant.

The MASTER: I think the last part of the objection is well taken. The objection is sustained.

Q. Were there, prior to July 10, 1903, any wires of the Western Union Telegraph Company assigned to the defendant in this case for i-s exclusive use during certain hours of business days running to points in Illinois?

Mr. WHITMAN: I object to that on the ground that it appears that the witness has no knowledge on the subject except by hearsay and it appears that he does not assign the wires; that it does not appear that he does assign the wires and that it is immaterial and irrelevant.

The MASTER: I think he may answer the question yes or no if he knows.

A. I cannot answer it directly yes or no; such wires are arranged for. I have nothing to do with the actual assignment.

Mr. WHITMAN: I move to strike out the statement of the witness that such wires are arranged for on the ground that it is not responsive to the question and it is a conclusion of the witness.

The MASTER: It may stand.

Mr. WHITMAN: And on the further ground that it does not appear whether such arranging for wires is by oral or written communication or contract and therefore the statement of the witness is not the best evidence.

233 The MASTER: It may stand.

Q. What do you have to do with such wires?

Mr. WHITMAN: I object on the ground that it assumes there are such wires.

The MASTER: He may answer.

A. As I stated before, I have charge of them in a clerical way.

Mr. WHITMAN: What do you know about them, how do you learn about them?

A. I see the contracts are drafted and records kept, of the charge therefor. The points to which they run and the towns to which they are connected.

Mr. WHITMAN: I think it appears then, your honor, that all this witness knows is that he has prepared papers which he assumes become contracts. His information is derived from that source, written instruments, and secondly, that from some source he received information which he makes into some kind of a record, and that his statements here on the subject would be derived from those instruments or from oral communications with other parties and from such records, and he does not even say that he makes those records. It seems to me if there are any records they are the proper basis for examination or can throw any light upon this subject, that the record should first be properly proven to know how they are made, whether they are original records or not; they should be proved by the proper parties and the records brought in.

Q. What if anything do you have to do with collecting the rentals on such wires?

Mr. WHITMAN: I object to that on the ground that the question is indefinite and does not show what wires counsel has been asking about, and if such wires refer to the assumed leased wires and their assigned wires that it assumes what does not appear competently in evidence.

The MASTER: The objection is overruled.

234 A. I advise or direct the superintendent in whose territory the wires have been located as to the amount to be collected and the time. With the actual collection I have nothing to do.

Q. Is it a part of your duty to know of every wire that may be assigned to the defendant for its exclusive use in the State of Illinois.

Mr. WHITMAN: I object to that as immaterial and irrelevant.

Q. And the length of time covering such service?

Mr. WHITMAN: I object to that as immaterial and irrelevant.

The MASTER: He may answer.

A. So far as so-called leased wires are concerned, yes.

Mr. WHITMAN: From what source do you get such information?

Mr. ROBBINS: Well, I suggest that cross examination will come at the proper time.

Mr. WHITMAN: That is correct. I thought I would help the game along by getting at the facts.

Q. Now, prior to the 10th of July, 1903, to how many points in the State of Illinois did these wires that were assigned by the Western Union Telegraph Company to the Hammond Elevator Company for its use during certain hours run?

Mr. WHITMAN: I object to that on the ground that it assumes that any wires were assigned; on the ground that it appears that this

witness has no knowledge of any such assignment except by hearsay; on the ground that he has no knowledge of the existence of any such wires or the points to which they run except by hearsay derived by oral or written communication or from drafting papers which he assumes become contracts, and from records which it appears he does not keep and the character of which records do not appear and on the ground that it is immaterial, irrelevant and incompetent.

The MASTER: The objection is sustained.

Q. In case that leases are made by the Western Union Telegraph Company to customers, do the leases themselves show the
235 points to which the wires run including the intermediate points between the termini?

Mr. WHITMAN: I object to that as calling for the contents of a written instrument, and on the ground that the contract or lease of the Western Union Telegraph Company with its customers is inadmissible against this defendant.

The MASTER: I think he may answer.

A. Merely show the termini.

Q. So there is no document showing the intermediate points at which the wires are operated or so-called drafts upon the wires?

A. None, excepting my records and of course the records of the various other officers where collections are made, and things of that kind.

Q. Do your records cover the entire State of Illinois?

A. They cover the entire country from Ogden to Buffalo and from Canada to Mexico.

Q. Do you know of any assignment of a wire running from the office of the Hammond Elevator Company at Hammond in the State of Indiana to the office of Battle & Dickes at Aurora, in the State of Illinois.

Mr. WHITMAN: I object to the—as irrelevant and immaterial and on the ground that the knowledge if any of the witness appears to be derived by hearsay or from written instruments or documents which are the best evidence and are not produced here, or from written records denominated by the witness "my records" but which appear from the evidence are not kept by him and which if competent as a base of testimony are themselves the best evidence of their contents.

The MASTER: You may answer.

A. May I hear the question?

(Question read.)

236 A. As I stated before, I have nothing to do with the actual assignment and if I am to answer aside from that I can do so.

Q. Well, answer aside from that.

Mr. WHITMAN: I further object to the question on the ground that it appears that the witness does not assign the wires and that his only knowledge of assignment of the wires is hearsay and any testimony on that subject would be hearsay.

The MASTER: Only answer as to what you know of your own knowledge?

A. The records show a wire to Aurora and a wire to Hammond.

Mr. WHITMAN: I move to strike out the answer of the witness as not responsive and as incompetent, not the best evidence and no proper proof of the record.

The MASTER: It may be stricken out.

Q. Well, what do you know in the course of your business about any wires of this kind?

Mr. WHITMAN: I object to this on the ground it appears what manner of information he has, and the source of it, and that his knowledge in the course of the business is not admissible as such against this defendant The Western Union Telegraph Company, not being in controversy, for which the Western Union Telegraph Company is party.

The MASTER: He may answer.

A. I didn't hear the question.

(Question read.)

A. I believe my answer as to dates would cover that.

Q. Well, I ask you as to this particular wire what you know?

A. As to this particular wire.

Mr. WHITMAN: I object to that on the ground it has already been asked and answered. He has stated what he knows.

The MASTER: Answer the question.

237 Q. I did not ask you about that. I ask you what you know in your business about wires running from the office of the Hammond Elevator Company to the office of Battle & Dickes in Aurora?

Mr. WHITMAN: I move to strike out the answer of the witness.

The MASTER: It may be stricken out.

(Question read.)

Mr. WHITMAN: I object.

The MASTER: He may answer.

A. Well I don't know how to answer that without a little further explanation.

Q. Well, do you know whether there is a wire or has been since January 1, 1903, running between these two offices?

Mr. WHITMAN: I object to that on the ground that the question has already been asked and answered and the witness has stated

what he knows about it and it appears from the evidence that any statement of the witness on the subject would be hearsay.

The MASTER: He may answer.

A. I stated the records show such a wire. I have nothing to do with the actual assignment.

Mr. WHITMAN: I move to strike out the answer of the witness as to what the records show.

The MASTER: It may be stricken out.

Q. Where are your records?

A. In the office of the Western Union.

Q. I guess I will have to ask you to bring them. Can you get them now?

A. Yes, sir.

Q. Well, we will excuse you and you go and get your records.

A. I have these excerpts made from the record.

Q. What?

A. I have this memorandum made from the record by myself.

238 Q. Well, they are very technical here.

Mr. WHITMAN: If your honor please, so far as these memoranda that the witness says he has are only copies of the records I will waive the objection that they are copies. I do not doubt but what they are correct copies, and I don't care to have this witness running his legs off.

The MASTER: Very well then, proceed on the same basis as if the record was here instead of these extracts from it.

Q. Well, what do the records of your department show respecting a wire in use by the Hammond Elevator Company between its office at Hammond, Indiana and the office of Battle & Dickes at Aurora, Illinois.

Mr. WHITMAN: We object to that. That is the same old question asking the witness to state the contents of a record. When he gets the records here I want to interpose a further objection to them.

The MASTER: Well, you are asking him to read from the record what it shows, Mr. Robbins.

Mr. ROBBINS: I am asking him to state what his record shows and the objection that it is secondary is waived.

Mr. WHITMAN: No, it is not either.

Mr. ROBBINS: That is the way I understand it.

Mr. WHITMAN: You have another guess.

The MASTER: Well, how do we stand here? I don't exactly understand the objection that is made now.

Mr. WHITMAN: Why, you- honor, if he has got some papers here, let him produce them and give them to Mr. Robbins and then we will assume that Mr. Robbins has these records in his hands and

then let him proceed as if he has the records here. But if he had the records here he could not proceed and ask him to tell what the records are.

The MASTER: I suppose the objection is well taken.

239 Mr. ROBBINS: Well, I don't know. I don't know how you can prove a business. Here is the man that has entire charge of that branch of it, and he has got a record. I call for the record. Counsel say they do not care about the original records; he has the original memoranda from which he can testify. Now the question is whether the court is going to rule that those records are not competent.

Mr. WHITMAN: I never said he could testify from the record or from memoranda of record.

The MASTER: The records have not been produced here nor has any extracts from the records been produced here, Mr. Robbins.

Mr. ROBBINS: That is true, and he waives production of the records. He says the memoranda shall take their place.

The MASTER: Then it seems to me that the question should in some way at least refer to the memorandum which you have introduced in place or brought here in place of the record; instead of that you are asking the witness to state something without any reference to the memorandum or to the record.

Mr. ROBBINS: Well of course the witness may refer to that memorandum and answer that question. I assume he will.

The MASTER: Produce the memorandum and then see what it shows.

Q. Have you the memorandum here?

A. I have.

Q. Let me see it?

A. I object to doing so because it not only covers the State of Illinois but covers other sections and the records would do the same. I can answer from the memorandum if desired.

The MASTER: Cannot you strike out the parts of it that refer to other parts of the country?

Mr. WHITMAN: I will agree to this, your honor. I will agree to let the witness dictate the portion of this memorandum that

240 covers the wires about which counsel wishes to examine him, and that then the dictated matter may be regarded as the records themselves, and counsel can make any offer of those records subject to my objection, that he sees fit.

Mr. ROBBINS: I make no such arrangement. I am going to get these records in if it takes all year. I am going to find out if it — feasible to find out the status of the leasing of these wires by the Western Union Telegraph Company by the man who has charge of it. I am not going to make any arrangement with counsel.

Mr. WHITMAN: I am not asking you to make any arrangement. If you like, I will.

Mr. ROBBINS: There is no difference in degree of secondary evi-

dence. If you waive the production of the original evidence, the witness' testimony is competent.

Mr. WHITMAN: I did not waive the production of original evidence. I merely agreed that I would allow that memorandum to be treated as of record, that the examination could go on on that basis. It shows how dangerous it is to try to agree to something and be accommodating and decent.

Mr. ROBBINS: You certainly agreed to waive the production of the original records.

Mr. WHITMAN: I did not.

Mr. ROBBINS: Besides, I don't think it is necessary. I think a man who knows about the condition of business and keeps a memorandum of it, it is like a written document. He says the records in his office kept under his supervision show certain things—has to show certain things. Now from that daily knowledge of that business he knows where certain wires run. It ought all to be covered by one question.

The MASTER: Now put your question, Mr. Robbins.

(Question read as follows: "Well, what do the records of your department show respecting a wire in use by the Hammond
241 Elevator Company between its office at Hammond, Indiana and the office of Battle & Dickes at Aurora, Illinois?")

Mr. ROBBINS: I renew that question.

The MASTER: I hardly know—I think the witness ought to produce a copy that is made from the record.

Mr. ROBBINS: Neither side is urging them to do that. I do not care for any information outside of Illinois, nor do they.

The MASTER: As I suggested before, I should think it would be a very simple matter for him to erase on that memorandum all that relates to wires to points outside the State of Illinois.

Mr. WHITMAN: So should I.

The MASTER: And to all wires excepting the wires between Hammond, Indiana, and the office of Battle & Dickes.

Mr. WHITMAN: I am perfectly willing that counsel does not wish him to exhibit it to these stenographers, that he should step out into your outer office and dictate it to the stenographer there, and I will flip up with Mr. Robbins and see who pays the stenographer.

Mr. ROBBINS: The trouble with the witness is these wires are terminals, the wire on which Babb is probably runs right through Illinois to Kansas City. Babb has a drop on that wire. Now I presume his memorandum shows the points beyond the Illinois border.

Mr. WHITMAN: Well, cut them off as Mr. Babb suggests.

The MASTER: Why cannot he erase all information except what relates to the wires between Hammond, Indiana and Chicago?

Q. Can you do that?

A. That would be practically the same as making a new one.

Q. Take a pencil and run right through it so that nobody can read it, can't you?

Mr. WHITMAN: Cannot you step out there and dictate it to the stenographer?

242 A. Yes, Now what do you want?

Q. I want the memorandum to cover all places in Illinois.

A. The wire and the drop.

The MASTER: That has been ruled out, Mr. Robbins. The last question related to the wire from the Hammond Elevator Company to Battle & Dickes.

Q. Will you kindly make a memorandum of that yourself, it seems to me. Copy what there is of that on your paper. Make a memorandum that will cover that one wire. I do not think you need any—put in the Babb wire too in that memorandum.

The witness then made the memorandum requested.

Q. Have you got that ready?

A. Yes, sir.

Q. Let me see it. (The witness handed counsel Complainant's Exhibit 3.)

Q. Does this memorandum that you now produce cover all the wires that are—of the Western Union Telegraph Company that prior to July 10th—on and prior to July 10, 1903, were in use to make a wire connection between Hammond, Indiana, and the office of the defendant at Hammond, Indiana, and A. H. Babb at Peoria and Battle & Dickes at Aurora?

Mr. WHITMAN: I object to that as incompetent and as calling for a statement of the witness as to what wires were in use, and on the ground that the leases, if any, for which wires are the best evidence, and that the records are the best evidence of their contents, and on the ground that the records are incompetent, inadmissible, and that no proper foundation has been laid for their production.

Mr. ROBBINS: The record is the best evidence, and that is incompetent.

The MASTER: I think he may answer.

A. May I hear the question?

(Question read.)

243 A. Yes sir, to the best of my knowledge.

Q. Well, for how long a period prior to July 10, 1903, does this memoranda here have reference to?

Mr. WHITMAN: Well, I object to that, your honor, we are now going to get into an oral examination of this witness or oral testimony from this witness, as to the contents of this record. Now he has produced here and has stated here that he has produced, the record of all such wires. Now if counsel wants to offer that record, let him do so, and it will give me an opportunity to make my objection.

Mr. ROBBINS: He has not produced the record. He has only produced this memorandum from the record.

Mr. WHITMAN: Well, I have agreed to treat the memorandum as the record, and I am bound to—and the court understands that though my objection to the competency and relevancy, that this memorandum is the record I have agreed to, but I have not waived my objection to the record.

The MASTER: What is that question?

(Question read.)

The MASTER: Doesn't it show?

Mr. ROBBINS: No, it shows July 10 and prior thereto.

The MASTER: This memorandum says "July 10, 1903, and prior thereto." I think it is competent to ask him how long prior thereto that covers?

A. Since the Hammond Elevator Compant began leasing wires last February 6, 1903.

Mr. WHITMAN: I move to strike out all the answer except February 6, 1903, as not responsive to the question and as amounting to the conclusion of the witness and as incompetent.

The MASTER: It may be stricken out.

Mr. ROBBINS: I offer it in evidence.

Mr. WHITMAN: I wish to object, your honor, to the memorandum or record, whatever you call it, offered, on the ground that it is immaterial, irrelevant, incompetent and not the best evidence,
214 and on the ground that the record in question is not admissible as against the Hammond Elevator Company and on the ground that no proper foundation has been laid for the production of the record. No proper proof made of it, and it does not appear between January 6 and July 10 that the witness makes the record, keeps the record in question, and on the ground that it does not appear that the record in question is the original record or from what sources of information purporting to be entered on the record in question is derived, and that those sources whatever they may be are the best evidence of the matters and things in question. I wish further to object particularly to that portion of the record or memoranda, the latter part of the second part of the second entry. The memoranda is made up as though consisting of five entries or items. The latter part of the second entry says, "The following intermediate offices; Stirling, Illinois; W. T. Moss, De Kalb, Illinois; T. F. McDermott." I want specifically to object to that portion of the record as immaterial and already ruled out by the court, and to that portion of what I have called the fourth entry, as follows: "Connected with the following offices"—the skipping Peoria, A. H. Babb follows. "Streeter, Illinois, Wolff & Co. Galesburgh, Illinois, W. B. Lloyd & Company." I think, your honor, that those items must have crept in the memorandum by a misunderstanding of the witness.

Mr. ROBBINS: Not at all. I guess you will find that the wires run

to those points and then branch wires run off to the other points. Three of those points are already in the testimony of the secretary of the company.

The MASTER: Oh, I will let it stand. I don't think it is a matter of any great importance. I will admit the paper and mark it Complainant's Exhibit 3.

A. I want to say I made a misstatement as to the date. May I correct it?

The MASTER: It is January 6, instead of February 6, 1903.

Q. What does the first item on this paper mean?

Mr. WHITMAN: I object to that.

The MASTER: Is there anything ambiguous about it? He
245 may explain.

A. It is a wire extending from Hammond, Indiana, to Chicago Illinois, connected with the office of the Hammond Elevator Company at Hammond, Indiana, and the office of the Western Union Telegraph Company at Chicago.

Q. Does it mean one wire or more than one wire?

A. One wire. The question as I understand it was as regards these particular wires running to Peoria and Aurora.

Q. Well, what does Chicago, Illinois, mean? Does it mean the office of the——

A. The Western Union telegraph office.

Q. The Western Union Telegraph Company?

A. Yes, sir.

Q. What does the second item mean?

A. A wire extending from the office of the Western Union Telegraph Company in Chicago to some office in Davenport, Iowa, connected at Chicago in the office of the Western Union Telegraph Company with this first mentioned wire, and at intermediate points named there.

Q. Running into the intermediate points named on the entry?

A. Yes sir. Also the third entry must be taken in connection with the second from Geneva to Aurora, a so-called loop.

Q. And how many wires does that third entry on this paper cover?

A. Two wires forming a so-called loop.

Q. Where *isle* end of the wire at Geneva?

Mr. WHITMAN: I object to the question as not being explanatory of the memorandum at all, and further on the ground that it is immaterial, irrelevant and incompetent, and on the ground that it appears that all the knowledge this witness would have on the subject was hearsay, and further on the ground that the testimony is limited to these two offices, Battle & Dickes and Babbs, and Hammond and Davenport Iowa is not in either of them.

The MASTER: I don't think that it is material.

Mr. ROBBINS: I don't think your honor understands.

The MASTER: Why is it necessary to know what office it is connected with at Geneva as long as it is connected?

Mr. ROBBINS: I have got to trace it to the same office the other wire runs to.

246 Q. How is the wire running from the office of Battle & Dickes at Aurora to Geneva connected with the wire that runs from Chicago to Davenport?

Mr. WHITMAN: I object to that on the ground that it appears the witness has no knowledge of his own on the subject. It is not explanatory of memoranda. The memorandum is complete on its face, and it is immaterial, irrelevant and incompetent.

The MASTER: He may state if the memorandum shows it.

Mr. WHITMAN: If he knows, of course, of his own knowledge.

The MASTER: If he knows.

A. The Chicago-Davenport wire of course passes through all Western Union offices along the line of that road. At Geneva this loop and this Chicago-Davenport wire are connected together in the Western Union Telegraph office very probably.

Mr. WHITMAN: Now I move to strike out the statement of the witness as to those wires at Geneva on the ground that it appears from the face of his answer that he knows nothing except from hearsay or by guessing at it.

The MASTER: I will let it stand.

Q. Now, in the fourth entry what point in Chicago do you mean by the word 'Chicago?'

A. Western Union Telegraph Company's office—main office.

Q. Now what do you mean by "wire below," the last item on this?

A. Yes sir.

Q. That is the wire from Chicago to Galesburg is connected with the wire mentioned in the fifth item of this memorandum?

A. Yes, sir.

Q. And in the office of the Western Union Telegraph Company at Chicago?

A. Yes, sir.

Q. Well, how is the office of A. H. Babb & Company connected with the wire between Chicago and Galesburg mentioned in that fourth memorandum?

A. Well, I don't quite understand what you mean.

(Question read.)

247 Q. Is there another wire running off from this main wire to the office of Babb & Company as in the case of Battle?

Mr. WHITMAN: I object to that. I object to the assumption of the question. I object to, "As in the case of Battle," assuming

there is a condition that does not appear from the evidence, and I object to the witness testifying to wires not shown on the memorandum. It appears that he has no knowledge of his own on the subject.

The MASTER: I think he may answer.

A. It is connected with the main wire and not with any side line.

Q. What is the expression in the business to cover an office of that kind? Has it any special name?

Mr. WHITMAN: I object to that as immaterial and irrelevant and not admissible against this defendant.

The MASTER: He may answer.

A. Known as drops usually.

Q. Please give the names of all offices or drops in the State of Illinois on July 10 and January 6, 1903, upon wires of the Western Union Telegraph Company in use—in the exclusive use during certain hours of the Hammond Elevator Company?

Mr. WHITMAN: I object to that as irrelevant, immaterial and incompetent.

The MASTER: The objection is sustained.

Mr. ROBBINS: I object to the ruling and reserve the right to have the question certified to the court.

No cross examination.

Mr. ROBBINS: I want to say as to this witness, the leases are to be here Friday. They had to send down to New York for them. They have telephoned me they could not get them here before Friday, so I may want to recall this witness when I get the leases.

A. H. BABB, was recalled and his direct examination continued by Mr. Robbins, as follows:

248 Q. Mr. Babb, have you produced one of the statements that was called for?

A. I sent up a couple.

Q. Have you produced any statements showing transactions in stocks?

A. If there was any stock done in those days.

Q. Well, I asked you to produce statements of some days covering stock; have you such a statement with you?

A. Yes. Those statements I sent covered all the business of those days. Here is a statement that is a closed trade in stocks.

Q. May I see those statements?

A. Certainly.

Q. Let me see them. I can tell which one I want.

A. That (indicating) is a stock trade, the last one.

Q. Let me see them all please.

(The statements were handed to the counsel by the witness)

Q. Is this one of the daily statements you testified you received each morning from the defendant, covering the transactions of the day before?

A. Yes sir.

Mr. WHITMAN: I think this ought to be marked.

Mr. ROBBINS: I offer that in evidence.

Mr. WHITMAN: I object to it as immaterial, irrelevant and incomplete.

The MASTER: It will be admitted and marked Complainant's Exhibit 4.

Mr. WHITMAN: Does this offer include both sides of it?

Mr. ROBBINS: Yes, there is not anything I am afraid of on either side of it.

Q. I notice this statement has a division line running through the center of it. What class of trades are put upon the lefthand of that dividing line?

A. Those are closed out trades are they not?

Q. The closed out trades?

A. Yes.

Q. What trades are entered on the right hand side of that division?

A. New trades.

249 Q. And under the word "Number" on the new trades, what do the figures indicate?

A. The number of the trade.

Q. Each trade being given the number on those statements?

A. Each trade has a number, yes.

Q. And it is known on these statements by its number?

A. Yes.

Q. What do the figures under the word "Debtor" on the left hand side of half of the sheet indicate?

Mr. WHITMAN: I object to this on the ground the matter has all been gone over and the question asked and answered before.

The MASTER: Let him answer.

A. Let me take one of those statements; either one.

(Statement handed witness.)

A. Under Debtor that is the amount of money charged up on a trade.

Q. How is that amount ascertained?

A. The amount of stock or grain.

Q. Is it by reason of some understanding between you and the Hammond Elevator Company?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness and not competent.

The MASTER: Let him answer.

Mr. WHITMAN: That is no different from a contract. Now when you come to prove up a contract the first thing to do is to show whether it is written or oral; if it is oral, prove it by showing the conversations that go to make up the contract, and not jump at the conclusions that it is a contract.

Mr. ROBBINS: The only question now before the court is whether as the result of an understanding.

Mr. WHITMAN: That is an interpretation of counsel, as to whether it is done in pursuance of some understanding or contract.

The MASTER: I think he may answer. I think that is proper.

A. Why, I have to put out so much money on each trade that I make; that is, they call me for so much money. That is what that means.

250 Q. Well, what is the understanding between you and the Hammond Elevator Company as to the amount to be inserted there?

Mr. WHITMAN: I object to that as incompetent.

Q. As to any particular trade?

Mr. WHITMAN: It is incompetent, calling for the conclusion of the witness, and on the ground it does not appear whether the understanding was the result of oral or written.

The MASTER: I think the proper way to put that question is what is done as to any particular trade, what is charged up.

Q. Well, how much is charged up under the word debit with respect to a particular trade?

A. On 1000 grain it would be $10. 10 shares of stock would be $10.

Q. And is the amount ascertained by the number of bushels of grain or the number of shares of stock in the particular trade?

A. One cent a bushel on grain, $1 a share on stock.

Q. Now is this true of all these entries under the word debt on the right hand side of this trade?

A. Yes, sir.

Q. It is a fixed sum?

A. One cent a bushel on grain and one dollar a share on stock, the first margin.

Q. Now, what do the figures indicate under the second debit on the right hand side of this sheet?

A. It calls for more margin.

Q. Well, explain that a little more fully?

A. A certain number and calls me, for instance, 1000 bushels of grain one cent a bushel; in case it was bought it goes down a cent he calls me for another and that is entered here.

Q. What does he do when he calls, just enters it?

A. He enters it.

251 Q. That is all the calling there is in it, he enters it when the price has reached that point?

A. Yes.

Q. And it appears on the statement the next day giving the number of the trade?

A. Yes.

Q. And at what rate does he call, the same rate for remargin as for original margin?

A. One cent a bushel; it might go lower, you know and he would call.

Q. He would keep on calling?

A. Yes, if it would break 2 cents he would call for two margins, you understand.

Q. But is any charge made for remargin in any one of the trades entered here before the market reaches the point to which the original margin carries the trade?

A. Buy 1000 bushels at 70. No, there is no charge made until exhausted.

Q. Until the first $10 is exhausted there is no charge made on this paper?

A. Not until the first——

Q. On the right hand side of the paper under the column bought and sold what is the price put there, the closing price?

A. That is the price it is closed out at.

Q. And under the words payment made?

A. That was the amount of money that was put up.

Q. The aggregate of the amount of margins, is it?

A. That is the amount of money that was put up on that trade; yes, sir.

Q. Including any remargins?

A. Yes, sir.

Q. And under the word credit is inserted the net result of the trade?

A. Yes, sir.

Q. Including the moneys put up on it?

A. Yes, sir.

Q. What does W. S. 175 indicate?

A. Wire service.

Q. How is it arrived at? How is 175 arrived at on this statement?

A. I think that that was 35 shares of stock.

Q. That indicates that in this particular statement there are 35 shares of stock, does it?

A. I think that was the one.

252 Q. Was that entered at the time when the shares of stock appear in the open trade or in the closed trade?

A. It appears when the trades are closed out.

Q. So that 175 on this statement would indicate that there were on the closed trades of this sheet 35 shares of stock?

A. In that case, yes.

Q. Take the trade appearing here, the last trade, on the left hand column, trade number 612, explain what that entry means of that trade?

A. That was a stock trade closed out at $17.50. There was $10 up.

Q. How many shares of stock does that indicate?

A. 10 shares, profit $7.50. $17.50, 50 cents wire service.

Q. Now what would $17.50 indicate as the opening price of that trade?

A. Why, I don't know whether that is bought or sold.

Q. If a purchase, what would it indicate? If it was not a purchase what would the statement indicate that the trade was opened at?

A. $16.50.

Q. $16.50. If the original trade was a sale what would the statement indicate that the trade was opened at?

A. $18.50. Hold on, no; three quarters instead of a half. That would be $16.75 and $18.25.

Q. Now assuming that that transaction was originally a purchase, I wish you would explain just what the transaction was?

A. I bought 10 shares of sugar perhaps.

Q. Of some stock?

A. Yes.

Q. At sixteen and three quarters?

A. I should judge that was sugar; 16¾.

Q. On which your customer put up $10.

A. Yes.

Q. And the market went to $17.50?

A. Yes.

Q. And at that price he ordered it closed out?

A. Yes, sir.

Q. And it was closed out at that price?

A. Yes, sir.

253 Q. Showing a difference between the buying and the selling price at $17.50?

A. No, $7.50.

Q. $7.50?

A. Yes.

Q. And showing due on the transaction $7.50 profit and $10 deposit?

A. Yes.

Q. Well, how much of that does the customer get?

A. $15.

Q. Why $15?

A. Because it belongs to him.

Q. Why didn't he get the balance?

A. Because it did not belong to him.

Q. To whom did it belong?

A. The balance belonged to me, most of it.

Q. Why did the most of it belong to you?

A. That is my commission that I charged.
Q. That is what I am trying to get at. The $2.50 was retained out of the $17.50 as commission?
A. Yes.
Q. How much of that $2.50 does the Hammond Elevator Company get?
A. 50 cents.
Q. So that on that particular transaction the Hammond Elevator Company at the outset charged up $10 as margin?
A. Yes.
Q. And when the trade was closed out that was all received by the Hammond Elevator Company, was it not? That $10 originally when the trade was opened?
A. Why, he got it when I sent it to him.
Q. And to that $10 the Hammond Elevator Company when the trade was closed out added the $7.50 of profit and remitted it all back to you except the 50 cents. Is that right?

Mr. WHITMAN: I object to that.

A. Yes.

Mr. WHITMAN: I object to that as leading and move to strike out the answer.
The MASTER: Let it stand.

Q. Do checks from the Hammond Elevator Company — to you with these statements when a statement shows a balance in your favor?
A. Not always.
254 Q. Do you receive checks at all?
A. Yes, sir.
Q. Do the checks correspond with the balance on the statement that they accompany when they come?
A. The checks come in bulk; when I want any money I ask them for it. I do not ask them to send me $30, $40 or $50 something like that; sometimes I am debtor and sometimes I am creditor.
Q. On this statement what does the 388971 at the bottom indicate?
A. Debtor; I owe the house that much money.
Q. It shows the state of your account with that house?
A. Yes.
Q. Indicating this statement?
A. Yes.
Q. Well, under what circumstances do you remit to the Hammond Elevator Company the amounts shown on these statements or the balances shown on these statements?
A. My trades, if closed out at the market, they would owe me money a good deal more than there is there; if my trades are in such condition that the house is perfectly safe I do not go down to the bank and deposit every day.

Q. When you deposit every day do you deposit the exact balance shown on these statements?

A. No, generally even thousands.

Q. Even thousands?

A. Generally.

Q. That is in the bank account to the credit of the Hammond Elevator Company?

A. The First National Bank of Hammond, I believe it is.

Q. Well, prior to July 10th.

A. The Hammond Elevator Company.

Q. And what do you say the name of the bank in Peoria was where they kept their account?

A. I do my business with the Commercial national.

Q. But where is this account with the Hammond Elevator Company kept in which you make your deposit for them?

A. I deposit in the Commercial national bank to their credit, to the credit of the First national bank at Hammond.

Q. I am asking you the situation prior to July 10, 1903.

255 A. I deposit in the Commercial national bank to the Hammond Elevator Company prior to that.

Q. Was that an account of yours or an account of the Hammond Elevator Company?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness.

The MASTER: He may answer.

A. When I deposit to the credit of the Hammond Elevator Company it is not my money.

Q. Do you make out a deposit slip when you make these deposits?

A. Yes.

Q. What does that deposit slip show as to the account to which the deposit is to be made?

A. Why, I make out a deposit slip to the Hammond Elevator Company, so much money.

Q. What further connection do you have with that deposit in that bank to which this money is put?

A. I have nothing to do with it after it is deposited to their account. It is nothing to me.

Q. Do you notify the Hammond Elevator Company of the deposit?

A. Yes.

Q. How do you do that?

A. I do not do it; the bank does that.

Q. What do you do about it?

A. Why, I simply deposit the money to the credit of the Hammond Elevator Company and the bank notifies them that I have done so, and the amount, generally as an accommodation I write the message for them "Babb deposited so much money your credit."

Q. When you make out the deposit slip you also write out a dispatch to be sent giving the amount of the deposit.

A. I generally do, as an accommodation. I do that as an accommodation to them. I don't have to do it; I just write it out and I sign it and send it.

Q. In the case of a transaction in 1000 bushels of wheat bought I think you said that $10 would be charged on this state-
256 ment against it?

A. Yes.

Q. When was the market—when would that trade be exhausted with the $10 deposit? At what point in the market, assuming the purchase of the trade was at 70?

Mr. WHITMAN: I object to that as immaterial and irrelevant. He has been all over that before.

The MASTER: He may answer.

A. Bought at 70?

Q. Yes.

A. 69⅞.

Q. 69⅞; why not 69?

Mr. WHITMAN: I object to that as calling for the conclusion of the witness, and on the ground it has been asked and answered before and it is immaterial and irrelevant.

The MASTER: He may answer.

Q. Because it closed at 69⅞. It is understood that the commission is to come out of that $10.

Q. So that the $10 does not carry the 1000 bushels of wheat a full cent below the market, according to the understanding?

A. Exhausts at 69⅞. It is closed out at 70. Not exhaust. The word exhaust hadn't ought to be there; it is closed out.

Q. I want to understand that a little more Mr. Babb. When you make a trade of 1000 bushels they take $10 of your money on that trade do they not?

Mr. WHITMAN: I object. That has been asked and answered before.

The MASTER: He may answer.

A. Yes.

Q. And when the market reaches 69⅞ if the purchase was at 70 the trade would be closed out?

Mr. WHITMAN: I object to that on the ground that it has been asked and answered before and on the ground that it is irrelevant and immaterial.

257 The MASTER: Answer it.

A. It would be closed out at 69⅞ if sold there.

Q. If the market went there?

A. Yes, 69⅛, if it is sold at 69⅛, that is providing the customer only wanted to lose $10.

Q. That is, provided there was no question of remargining?

A. Yes.

Q. In the absence of a remargin directed by the customer the trade would expire at 69⅛ if the market for that many wheat reached that point, is that right?

A. It would be closed out at 69⅛.

Q. If the market for that kind of wheat sold at 69⅛.

A. It would be closed out.

Q. And that is true of all these statements—these trades entered on this statement, is it?

A. Yes.

Q. And the matter—the making of these statements and the entry of these trades upon them that you have testified to has reference to a period between January 6th and July 10th?

A. Yes.

Q. 1903?

A. Yes.

Q. What?

A. Yes, sir.

Q. Now was it that ⅛ that is retained by this statement, what do you say it is? Commission?

A. I charge ⅛ commission on grain for doing business?

Q. And that ⅛ is, on this particular trade—is remitted back to you by the statements that are sent and the deposit of money one way or the other, is it?

A. Why, the amount put up and the profit on the commodity to be returned to me.

Q. And the commission?

A. The full amount. The full profit and the amount of the deposit.

Q. Well, on a trade we are supposing of a $10 deposit on 1000 bushels of wheat and an exhausting of the trade because the market has reached 69⅛ there would be no profit would there?

A. No, there would be no profit then.

Q. Now, what would be sent back to you?

A. $1.25.

Q. And that is the eighth you speak of, is it?

258 A. That is the eighth I speak of.

Q. Would all that ⅛ be sent back to you if it were a stock transaction?

A. You are speaking of grain?

Q. I know; but if it were a stock transaction would all that commission be sent back to you?

A. No.

Q. How much would be kept out?

A. 50 cents on 10 shares of stock.

Q. One fifth of the commission, an amount equal to one fifth of the commission?

A. The commission on stock is one quarter; the commission on grain is one eighth.

Q. Well, on 10 shares of stock what would be the commission?

A. $2.50

Q. Now, if a trade for 10 shares of stock was closed out because it was not remargined and the market for that kind of stock declined ¼ of a cent it would be closed out, would it?

A. Yes.

Q. Now what you—what would be sent back of the $10 charged against that trade—well, for instance, no, just how much would be sent back of the $10?

A. And exhaust it, $2.50 was coming under the credit.

Q. Well, I know, but never mind that. How much when there is $10 on the transaction on stock, on 10 shares of stock, a trade is closed out because the margin is exhausted, how much of that $10 is sent back to you by the Hammond Elevator Company?

A. I get credit for $2.50 wire service 50 cents.

Q. So practically you get $2 back?

A. Yes, practically $2.

Q. And they retain 50 cents?

A. Yes.

Q. And that is true of all the transactions in stock, is it?

A. Yes.

Q. That is to say the proportionate charge and manner of doing the business in all your stock transactions?

A. Yes.

Q. And then you had stock transactions covering that period between January 6, and July 10, 1903?

A. Oh, yes.

Q. A good many of them?

A. Quite a good many of them.

Q. At certain times in your trade the stock transactions exceed in number and volume the grain transactions, do they not?

259 A. Sometimes.

Q. Sometimes during the period we are inquiring about that was true, was it not?

A. I presume so, More stock trades than grain a day some days.

Cross examination.

By Mr. WHITMAN:

Q. Mr. Babb, you don't pay any wire service on your grain, is that right?

A. I do not.

Q. Do you get any quotation from the Hammond Elevator Company on grain?

A. No, sir.

Q. Do you get any stock quotations?
A. Yes, sir.
Q. Over this wire?
A. Yes, sir.
Q. Then the wire service that you speak of which is figured in whole or in part on a percentage basis includes the service by wire of the stock quotations, is that right?
A. Yes, sir.

Re-direct examination.

By Mr. ROBBINS:

Q. You get the quotations of stock every day in the month do you not, every business day?
A. Whenever they are sent.
Q. And they come to you as soon as the market opens in the morning and cease at the closing time of the New York Stock Exchange?
A. Supposed to.
Q. And they are posted on your blackboard during that time?
A. Yes, sir.
Q. Suppose you had no stock trades for a week or a month; how much would you pay for that so-called wire service during that week or month?
A. Would not pay anything, only what I paid in the month, as I told you before.

260 Re-cross examination.

By Mr. WHITMAN:

Q. So that the more business you do on those quotations received over that wire, the more you pay for them, and the less you do, the less you pay for them, is that the idea?
A. That is all.

Mr. WHITMAN: I move the court for a rule on the complainant te close proofs by a short day.
The MASTER: Well, I will enter a rule to close proofs in ten days.

Thereupon the further taking of evidence in this cause was continued until November 27, at two o'clock p. m.

NOVEMBER 27, 1903—two o'clock p. m.

Present: Messrs. Robbins, Whitman & Brown.

The MASTER: Mr. Robbins, I have a letter here from Mr. Dickes' father stating that his son is on a hunting trip (handing letter to counsel).
Mr. ROBBINS: Well, perhaps Mr. Battle will answer.

The MASTER: It never occurred to me to ask Mr. Battle to come in because I supposed Mr. Dickes would come.

Mr. ROBBINS: I have no other witness. I expected to have the leases required, but the Western Union people say they won't get them here until Sunday morning.

The MASTER: Well, the best would be then to set the matter for Monday morning, I think.

Mr. WHITMAN: I want to enter an objection to the continuance, your honor, The matter has been set and no showing made by counsel, and he appears without any witnesses, and the record made here simply shows a written communication from the witness, or rather from the father of a witness, who was not subpœnaed, or at least does not appear to have been subpœnaed, and the oral statement of counsel as reason therefor, is not sufficient to warrant
261 a continuance, I think the complainant should be compelled to close proofs to-day.

The MASTER: The letter that you refer to was in answer to a letter written by me to Mr. Dickes asking him to appear here to-day.

Mr. WHITMAN: That is perfectly true but a letter written by a commissioner or master in chancery to a prospective witness not one of the parties to a proceeding pending before the master in chancery, is not the recognized process for requiring the production of a witness, and the only right you have to take a continuance upon the failure of a witness to appear is upon showing that you subpœnaed him and he failed to respond to a subpœna.

The MASTER: Oh, well, this is not a formal trial of a case in court. The objection is overruled and the matter is set for ten o'clock Monday morning.

Whereupon an adjournment was taken until Monday, November 30, 1903, at 10 o'clock a. m.

MONDAY, *November* 30, 1903—2 o'clock p. m.

Met pursuant to adjournment.
Present as before.

J. L. DICKES, recalled for further examination on behalf of the complainant, testified as follows:

Direct examination by Mr. ROBBINS:

Q. Referring to Complainant's Exhibit 2, please explain under what circumstances a trade is entered under the second column headed "number" and second column headed "debit" to the right of the right half of that statement?

262 Mr. WHITMAN: Just a moment, your honor, I object to the question on the ground that the matter has been all gone over, and on the ground there is no showing to warrant the recalling of this witness, with whom counsel closed once.

The MASTER: Objection overruled.
Mr. BROWN: Exception.

A. Why this market—we will take it, for instance, if that was a long trade, that is a buying—something that had been bought, and the market reacts sufficiently to call for a remargin why they charge you something.

Mr. ROBBINS:

Q. Well, suppose that it is a purchase of 1000 bushels of May wheat at 70. The trade would be first entered under the left hand columns headed "number" and "debit" would they not?

Mr. WHITMAN: I object, your honor, and I would like to understand on what ground counsel claims the right to examine this witness in this way. I understand that when Battle was on the stand Mr. Robbins failed to have him bring in statements here, that therefore he had Battle mail him this statement, if I am not mistaken, and that Dickes has been recalled—why, instead of Mr. Battle I don't know—simply to identify these statements and put them in evidence.

The MASTER: You are wrong about that; Dickes brought this statement in himself. He has not closed his case yet and he has a right to recall the witness without further examination.

Mr. WHITMAN: Without any showing?

The MASTER: I think so, without any showing at all.

Mr. WHITMAN: That is a ruling then on my objection, your honor, I just want a ruling.

The MASTER: Objection overruled.

(Question read.)

A. Yes, sir.

263 Mr. ROBBINS:

Q. That is to say, the number of the trade would be entered where 343 appears on this exhibit?

A. Yes, sir.

Q. And what would be the amount of margin charged against that trade?

A. $10.

Q. Is that the regular margin fixed for trades of that size?

A. It is for that column.

Q. What?

A. It is for that column.

Mr. WHITMAN: Just read back there; I think you asked a question if the entry would not first be made on the debit and credit on the left hand, and then you have said that is where 343 is.

Mr. ROBBINS: I should have said right hand side.

Mr. WHITMAN: Then I think you had better ask the witness the question again; it is certainly not clear now.

Mr. ROBBINS:

Q. You understand on the right hand side, on the right hand half of the page.

A. I understood it on the right hand side; there is nothing on the left hand.

Q. What is the understanding between your firm and the Hammond Elevator Company on that subject, as to the amount?

Mr. WHITMAN: I object as calling for a conclusion and not the best evidence, and also on the ground it has been gone over before.

The MASTER: I think you should put that question: What is the custom, Mr. Robbins.

Mr. ROBBINS: Well, what is the custom?

Mr. WHITMAN: I object on the ground that it does not appear there is any custom; that the relations of the parties are governed by contract.

The MASTER: Objection overruled.

A. $1 a thousand.

Mr. ROBBINS:

Q. Is that the amount charged in all these trades?

264 A. It was for grain, when we handled grain.

Q. For all grain charged between January 1st and July 10th 1903?

A. It was when we had the grain.

Q. And what was the amount that was charged in case of stocks?

A. $1 a share.

Q. That was charged in the case of every stock transaction between those periods?

A. Yes, sir.

Q. If the market goes against your customer what happens then with reference to this trade, or the entry of it on a statement to—daily statement such as this?

A. It is charged in the column set aside for remargins.

Q. The number of the trade is entered?

A. Yes, sir.

Q. In the column where the number 342 appears on this exhibit?

Mr. WHITMAN: 343.

Mr. ROBBINS: 342.

A. Yes, this is another one.

Q. And what does the figures 10 to the right of 342 and on the same line indicate?

Mr. WHITMAN: Just a moment. I would like to hear the question read. (Counsel here read from the record.) That is exactly the same thing.

Objection overruled.

(Question read.)

A. $10.

Mr. ROBBINS:

Q. And why is it put there?
A. Because it was called for a remargin, that particular trade.
Q. And is the amount entered for remargin always a fixed amount?
A. It depends on the market.
Q. What?
A. It depends on what the market is.
Q. Well, when, in a trade of 1000 bushels of wheat purchased for a future month at 70 is the trade entered upon the sheet for remargins?
265 A. If the market reacts sufficiwntly to call it.
Q. Well, to what point?
A. If it was bought at 70 we would call at 69⅛.
Q. The first $10 charge against the trade would carry it to 69⅛ is that right?
A. Yes, sir.
Q. Why 69⅛ instead of 69?
A. Well, we always charge it that way so that we can get our commission out of it.
Q. That is the commission is taken out of the $10 is that right?
A. Well, I wouldn't know what you would take it out of; it is taken when the trade is closed.
Q. But in all these trades entered upon these statements as closed trades, they are closed in a way to include the commission?
A. Not always.

Mr. WHITMAN: Wait a minute; I object to that, and move to strike the answer out on the ground that it calls for the conclusion of the witness and is argumentative.
The MASTER: It may stand.
Mr. BROWN: Exception.

Mr. ROBBINS:

Q. Well, when is it not?
A. If it was not succeeded in being closed there.
Q. Well, regardless of the figure at which it was closed, would not the statement include the commission?
A. I don't understand the question.
Q. Does not every statement rendered by you covering any closed trades——

Mr. WHITMAN: You mean rendered by the witness, Mr. Robbins:
Mr. ROBBINS: Yes.

Q. —is not such a trade made up upon the basis of a deduction of the commission from the amount of margins previously charged against that trade?

Mr. WHITMAN: I object to that as calling for the conclu-
266 sion of the witness and on the ground that the subject matter has been gone over once and the same question asked and answered.

The MASTER: Objection overruled.
(Question read)
Mr. ROBBINS: Rendered "to" you; that should be.

A. Well, there is nothing on the statement to show.
A. No, but I mean in effect.

Mr. WHITMAN: Well, I object as calling for the conclusion of the witness. He is simply asking this witness, your honor to say whether or not Mr. Robbins' deductions from the facts are correct or not, and a deduction which will have to be argued before your honor.
The MASTER: I think he may answer.

A. Well, I don't really understand what you mean.

Mr. ROBBINS:

Q. Suppose that 1000 bushels of wheat is bought at 70 and the quotations reacted to 69⅛ and the customer does not desire to remargin: What would happen?
A. The customer does not care to remargin.
Q. Yes, or instructs you not to remargin?
A. Well, in case he buys it at 70 and does not care to remargin, if the market should react we send in a closing order to close out at 69⅛.
Q. Well, now, is that—when is that trade closed?
A. When he tells us to.
Q. I know; but when with respect to the condition of the market?
A. It is closed at 69⅛.
Q. 69⅛?
A. Yes, sir. That is, we try to close at that figure, but don't always succeed.
267 Q. At what price, as a rule, is it closed?
A. As a rule? In an active market, something that is traded in a great deal, we usually succeed in getting the closing price which we send in.
Q. In getting it from whom?
A. I mean by that, the trade is closed at that figure.
Q. I said, you succeed in getting it, getting it from whom?
A. Getting that price.
Q. Getting that price from whom?
A. From the Hammond Elevator Company.
Q. From the Hammond Elevator Company?
A. Yes, sir.
Q. Well, in any order sent in to the Hammond Elevator Company where they give you that price, at what price is the trade closed in the case supposed?

Mr. WHITMAN: I object to the question as unintelligible. Read the question.

(Question read.)

The WITNESS: You will have to be a little more definite.

Mr. ROBBINS: Well——

Mr. WHITMAN: Just a moment. I move to strike out the statement of the witness; there is an objection before the court. Counsel is asking the witness when he gets that price what price it is he got.

The MASTER: I think the question is a little blind.

Mr. ROBBINS: Read the question before that and the answer.

(Question and answer read.)

Mr. ROBBINS:

Q. As a rule the Hammond Elevator closes the trade at the price to which the margin charged against the trade carries the trade less the commission, does it not?

Mr. WHITMAN: I object to that. In the first place, it does
268 not appear that the Hammond Elevator closes the trade at all; on the contrary, that Battle & Dickes close the trade. And, in the second place, the witness has already testified that the Hammond Elevator Company sells or buys, as the case may be, as nearly as possible at the price they order; there cannot be any usual about it.

The MASTER: He may answer.

A. Well, it depends if the market goes there; if the market if there is such a quotation, such a price for it and if not we have to take the next best price. Frequently that trade would be closed at 69 instead of 69⅛; it happens very often.

Mr. ROBBINS:

Q. Under what circumstances?

A. Why, as I have stated, there is no market there at that price.

Q. Well, when there is a market at 69⅛ at what price is the trade closed?

A. Just where we tell them, at 69⅛.

Q. At the price named in the telegram?

A. Yes, sir.

Q. And that is always true when there is a quotation at that price, is it not?

A. Yes, sir.

Q. What?

A. As a rule.

Q. Now, in the trade that we have supposed of 1000 bushels of wheat at 70, and the charge of $10, the usual charge of $10, margin against it at the time the trade is made and no remargin and the market reacts to 69⅛, the trade would be closed at that price would it not?

A. If we tell them to.

Q. Assume that you tell them to. Indicate on Exhibit 2, just what would be entered in the next day's statement sent to you?
A. The number of the trade.
Q. Yes, that would be on the left hand column?
A. Yes, sir.
Q. Of the whole sheet?
A. No, bought and sold, the price it was closed.
Q. Give the price?
A. 69⅛.
Q. 69⅛ under "Payments made" what would be?
A. $10.

Q. $10? If the case had been remargined once what would
269 be entered in there?

A. Whatever was put up.
Q. In addition to the $10?
A. Yes, sir.
Q. Assuming there is no remargin then, what would be entered under the word "credit"?
A. $1.25.
Q. How do you arrive at $1.25?
A. That is one-eighth, that was returned to us.
Q. And what other charge would there be on the paper relating to that trade?
A. There would be 25 cents on the debit side for wire service.
Q. So that out of the $10. charged against the trade originally you would get $1. and no more?
A. Well, you can take it just as you like.
Q. I am asking——
A. There is $1.25 return credit. They charge wire service on that trade 25 cents, I think, for $10. no, 1000 this is.
Q. What?
A. At 1000.
Q. As a matter of fact, that trade—give you credit on one side of the sheet for $1.25 and they charge you 25 cents on the other side.
A. For wire service.
Q. And ultimately you receive by deposit or check $1. on that trade, is that right?
A. Yes, sir.
Q. And no more?
A. No more.
Q. Now assuming the trade was for 100,000 bushels of wheat at 70 instead of 1000 bushels, and it had been closed at the same price. What would be entered on the credit side of this statement as coming to you?

Mr. WHITMAN: I object on the ground the question in substance has been asked and answered before, and it is going over the same question three or four times.

270 The MASTER: Objection overruled.

The WITNESS: 100,000.

Mr. ROBBINS: Yes. That is a little large, I guess, but then——

A. $125.

Q. And what would be entered on the debit side of the statement as respects that transaction of 100,000.?

A. $25 for wire service.

Q. $25 for wire service. And how much would you receive out of the transaction from the Hammond Elevator Company?

A. $125.

Q. Wouldn't it be $100?

A. Well, the statement—you will have to take the statement for what it shows.

Q. I am speaking of the money, not the statement. How much money would you get on that transaction?

A. Just as I told you in regards to the ten.

Q. Well——

A. The 1000 bushels.

Q. Well, how much money would you get on the 100,000 dollars transaction from the Hammond Elevator Company?

Mr. WHITMAN: I object as calling for the conclusion of the witness.

The MASTER: Objection overruled.

A. Ultimately $100.

Mr. ROBBINS:

Q. How much more use of the wire would be involved in the 100,000 bushel transaction than in the 1000 bushel transaction?

Mr. WHITMAN: I object to that. He hasn't got a right to cross examine his own witness. He has got the facts.

The MASTER: I think he may answer.

The WITNESS: What is that question?

(Question read.)

A. As far as I know, no more.

Mr. ROBBINS:

Q. Now does the testimony you have given this afternoon
271 in respect to the entries upon this statement and closing of the trades, and the making of the statements, apply to the manner in which the business was done between January 1st and July 10, 1903?

A. Yes, sir, as near as I can remember.

Q. And the same is true of stock transactions?

A. Yes, sir.

Q. And was during that time?

A. Yes, sir.

Mr. ROBBINS: That is all.

Cross examination by Mr. WHITMAN:

Q. Mr. Dickes, suppose the trade is opened at 70 and subsequently you wire the Hammond Elevator Company to close the trade at 69⅛ or if there is no market at 69⅛ to close the market at 69 as being the next market at 69⅛. Where do you get your commission, if at all?

A. We must then collect it from the customer.

Q. If you don't collect it, does the Hammond Elevator Company pay it to you?

A. No, sir.

Q. If you get $10 on the trade when it is opened—is that right?

A. Yes, sir.

Q. Are you charged up with the 25 cents or $25 as the case may be whether you get it from the customer or not?

A. No, sir—ask that question again.

Question read as follows:

"Q. Are you charged up with the 25 cents or $25 as the case may be, whether you get it from your customer or not?"

A. Yes, sir, of course.

Q. If the trade opens at 70 and is closed at 69—take the 100,000 bushel order, for example—you are charged up with $25 for wire service, is that right?

A. Yes, sir.

272 Q. Now, if you are unable to collect that $25 from your customer does the Hammond Elevator Company give you credit for that amount?

A. No, sir.

Mr. WHITMAN: That is all.

Whereupon an adjournment was taken until Thursday, December 3rd, 1903, at 10 o'clock a. m. for arguments.

The foregoing was all the evidence introduced.

WILLIAM M. BOOTH,
Master in Chancery.

273 We solicit and will receive no business except with the understanding that the actual delivery of all property bought from us, or sold to us, is in all cases contemplated and understood.

Hammond Elevator Company (Incorporated).

Capital stock, $200,000, full paid.

Dealers in *grain, provisions, cotton, stocks* and bonds, and other securities.

We have no agents. Grain in car lots.

HAMMOND, IND., 11/11, 1903.

M-. Battle & Dickes, Aurora, Ills.: Telephone Lake Shore 443.

No.	Bought and sold.	Payment made.	Credit.	No.	Debit.	No.	Debit.
				343...	✓ ✓ 10	Ford.	10
						342	✓ ✓ 10
						326	✓ ✓ 20
						307	✓ ✓ 20
							60

Ledger this a. m. even.

Case No. 26837.
Compl't's Exhibit No. 2. Wm. M. Booth, master in chancery, U. S. circuit court.

Case No. 26837.
Def't's Exhibit No. 1. Wm. M. Booth, master in chancery, U. S. circuit court.

Form of Agreement Assented to by All Who Deal with the Hammond Elevator Company (Incorporated).

In consideration of the Hammond Elevator Company, Incorporated, a corporation doing business in the city of Hammond, county of Lake, State of Indiana, consenting through its manager to deal and to contract with me as principal, in buying and selling commodities, I hereby agree:

First. In all cases where I shall purchase from or contract to purchase from, or shall sell to or contract to sell to the said Hammond Elevator Company, any commodity, I will receive and pay for the commodity purchased or contracted to be purchased from it, and will deliver the commodity sold or contracted to be sold to it.

Second. That to secure the said corporation of the Hammond Elevator Company against any default on my part in carrying out any contract or contracts for the purchase or sale of any commodity, I will keep deposited with said Hammond Elevator Company, or to its credit, with and in some good bank (to be selected by it) a sum of money sufficient for such security at all times. The said Hammond Elevator Company to be the judge as to what amounts are necessary to secure it on each contract or contracts.

Third. That for such purchases or contracts for purchases from said Hammond Elevator Company, I will keep deposited with it or to its credit, in some good bank, as aforesaid, a sum of money that shall amount at all times to at least one-eighth of one per cent. par value more than the decline in the market value of such commodity, below the price agreed to be paid for such commodity, and such additional sums as said corporation of the Hammond Elevator Company shall deem necessary and shall demand; and if at any time, in consequence of fluctuations in the market price of such commodity the said deposit by me shall be reduced to less than one-eighth of one per cent. par value, more than the decline in the market price below the purchase price aforesaid, or in case I shall not deposit such additional amounts demanded as aforesaid, or in case of my default in any of the terms of this agreement, or any agreement, I hereby authorize the said Hammond Elevator Company, for its own protection, immediately, without notice to me, at its election, to sell such commodity at the then market price on my account.

Fourth. That for such sales or contracts for sales to the said Hammond Elevator Company, I will keep deposited with it, or to its credit in some good bank, as aforesaid, a sum of money that shall amount at all times to at least one-eighth of one per cent. par value, more than the advance in the market price of such commodity, above the price agreed to be paid by said corporation for such commodity; and such additional sums as the said corporation shall deem necessary and shall demand; and if, at any time, in consequence of fluctuations in the market price, such security so deposited by me shall be reduced to less than one-eighth of one per cent. more than the advance in the market price above the sale price of such commodity, or in case I shall not deposit such additional sums demanded, as aforesaid, or in case of my default in any of the terms of this agreement, or any agreement, I hereby authorize the said Hammond Elevator Company, for its own protection, immediately, without notice to me, at its election, to buy such commodity at the then market price on my account.

Fifth. That all moneys deposited by me as aforesaid upon purchases or sales, or upon contracts for purchases or sales, as aforesaid, shall be held by the said corporation of the Hammond Elevator Company, as security, not for only my carrying out any particular contract for the purchase or the sale of any commodity, on which the money was deposited, but also as security for my carrying out

all of my contracts with said corporation for the purchase or the sale of commodities; and in case of my default in any of my contracts or in any of the terms of this agreement, it may be taken and construed by the said corporation, if it so elects, as a notice from me that I will default in all of my contracts then existing and not matured, and I hereby authorize the said Hammond Elevator Company, for its own protection, immediately, or at any time, without notice to me, at its own election so to do, to buy or sell such commodities as I have contracted for at the then market price, on my account, and from that time I have no claim or claims against said Hammond Elevator Company, for anything connected with such contract or contracts.

Sixth. That the market price on the Chicago Open Board of Trade for the time shall be considered the market price for grain and provisions in case of a dispute between us, and the market price on the New York stock exchange for the time shall be considered the market price for all stocks in case of any dispute as to what the market price was.

Seventh. That I am not and will not represent myself as being agent for said Hammond Elevator Company, but will represent that I have no authority to act for it. It is not responsible for anything that may be done by me.

Eighth. That any contract I may send said Hammond Elevator Company, either by mail, by wire or by telephone, although in abridged form, if accepted by it, shall be taken, construed and understood as an agreement on my part to receive and pay for the commodity bought from it, and to deliver the property sold to it, and as embodying on my part the terms of this agreement.

Ninth. That deliveries of grain and provisions may be made at the office of the Hammond Elevator Company, in the city of Hammond, to said Hammond Elevator Company, either in Chicago warehouse receipts or in their accepted orders calling for the commodity upon presentation.

Tenth. That stocks and bonds shall be delivered at the office of the Hammond Elevator Company, in the city of Hammond, or at the election of said Hammond Elevator Company, in New York city, or upon accepted sight orders calling for the commodity upon presentation.

Eleventh. That in all cases where said Hammond Elevator Company shall tender to me, at any place or manner as aforesaid, any commodity contracted to be purchased by me, if I do not take and pay for the same within twenty-four hours thereafter, said Hammond Elevator Company is hereby authorized at its election, and without notice to me, immediately, or at any time, to sell such commodity at the then market price on my account.

Twelfth. It is agreed that this contract shall not nor shall any other contract herein referred to or herein contemplated be assigned by me without the written consent of said Hammond Elevator Company first had and obtained.

274 July 10/1903 and prior thereto.
Hammond, Indiana to Chicago, Ills.
Connected with office of Hammond Elevator Co., at Hammond, Ind.
Chicago, Ills. to Davenport, Iowa.
Connected with above wire at Chicago, no office at Chicago, Following intermediate offices:
Sterling, Ills., W. T. Moss.
De Kalb, " T. F. McDermott.
Geneva to Aurora, Ills.
Connected with Chicago, Davenport wire at Geneva and with office of C. S. Battle at Aurora.
Chicago to Galesburg, Ills.
Connected at Chicago with wire below Hammond, Ind. to Chicago, Ills.
Connected with the following offices:
Peoria, Ills., A. H. Babb.
Streator, " Wolfe & Co.
Galesburg, " W. B. Lloyd & Co.
Hammond, Ind. to Chicago, Ills.
Connected with office of Hammond, Elevator Co. at Hammond, Ind.

Case No. 26837.
Compl't's Exhibit No. 3 Master in chancery U. S. circuit court.

275 We solicit and will receive no business except with the understanding that the actual delivery of all property bought from us, or sold to us, is in all cases contemplated and understood.

Hammond Elevator Company (Incorporated).

Capital stock, $200,000, full paid.

Dealers in grain, provisions, cotton, stocks and bonds and other securities.

We have no agents. Grain in car lots.

HAMMOND, IND., 11/17, 1903.

M-. A. H. Babb, Peoria, Ills.: Telephone Lake Shore 443.

No.	Bought and sold.	Payment made.	Credit.	No.	Debit.	No.	Debit.
528	100½	1 25 50	✓ 62 50	✓ 611	✓ 50	For'd	292 50
603	33½	— 100	✓ 100	✓ 612	✓ 10	609	✓ 10 ✓
607	—	— 100	✓ 150	✓ 614	✓ 50	608	✓ 10 ✓
611	34¼	— 50	✓ 81 25	✓ 613	✓ 50	613	✓ 50 ✓
612	117½	50c. 10	✓ 17 50	✓ 615	✓ 50	576	✓ 10 ✓
				✓ 616	✓ 10	W. T.	✓ 1 75
				✓ 618	✓ 10		
				✓ 619	✓ 62 50		
			411 25				374 25

D. 3,852.71
Ledger Dr. this a. m. 3889.71

Case No. 26837
Compl't's Exhibit No. 4. Wm. M. Booth, master in chancery U. S. circuit court.

Form of Agreement Assented to by All who Deal with the Hammond Elevator Company (Incorporated).

In consideration of the Hammond Elevator Company, Incorporated, a corporation doing business in the city of Hammond, county of Lake, State of Indiana, consenting through its manager to deal and to contract with me as principal, in buying and selling commodities, I hereby agree:

First. In all cases where I shall purchase from or contract to purchase from, or shall sell to or contract to sell to the said Hammond Elevator Company, any commodity, I will receive and pay for the commodity purchased or contracted to be purchased from it, and will deliver the commodity sold or contracted to be sold to it.

Second. That to secure the said corporation of the Hammond Elevator Company against any default on my part in carrying out any contract or contracts for the purchase or sale of any commodity, I will keep deposited with said Hammond Elevator Company, or to its credit, with and in some good bank (to be selected by it) a sum of money sufficient for such security at all times. The said Hammond Elevator Company to be the judge as to what amounts are necessary to secure it on each contract or contracts.

Third. That for such purchases or contracts for purchases from said Hammond Elevator Company, I will keep deposited with it or to its credit, in some good bank, as aforesaid, a sum of money that shall amount at all times to at least one-eighth of one per cent. par value more than the decline in the market value of such commodity, below the price agreed to be paid for such commodity, and such additional sums as said corporation of the Hammond Elevator Company shall deem necessary and shall demand; and if at any time, in consequence of fluctuations in the market price of such commodity the said deposit by me shall be reduced to less than one-eighth of one per cent. par value, more than the decline in the market price below the purchase price aforesaid, or in case I shall not deposit such additional amounts demanded as aforesaid, or in case of my default in any of the terms of this agreement, or any agreement, I hereby authorize the said Hammond Elevator Company, for its own protection, immediately, without notice to me, at its election, to sell such commodity at the then market price on my account.

Fourth. That for such sales or contracts for sales to the said Hammond Elevator Company, I will keep deposited with it, or to its credit in some good bank, as aforesaid, a sum of money that shall amount at all times to at least one-eighth of one per cent. par value, more than the advance in the market price of such commodity, above the price agreed to be paid by said corporation for such commodity; and such additional sums as the said corporation shall deem necessary and shall demand; and if, at any time, in consequence of fluctuations in the market price, such security so deposited by me shall be reduced to less than one-eighth of one per cent. more than the advance in the market price above the sale price of such commodity, or in case I shall not deposit such additional sums demanded, as aforesaid, or in case of my default in any of the terms of this agreement, or any agreement, I hereby authorize the said Hammond Elevator Company, for its own protection, immediately, without notice to me, at its election, to buy such commodity at the then market price on my account.

Fifth. That all moneys deposited by me as aforesaid upon purchases or sales, or upon contracts for purchases or sales, as aforesaid, shall be held by the said corporation of the Hammond Elevator Company, as security, not only for my carrying out any particular contract for the purchase or the sale of any commodity, on which the money was deposited, but also as security for my carrying out

all of my contracts with said corporation for the purchase or the sale of commodities; and in case of my default in any of my contracts or in any of the terms of this agreement, it may be taken and construed by the said corporation, if it so elects, as a notice from me that I will default in all of my contracts then existing and not matured, and I hereby authorize the said Hammond Elevator Company, for its own protection, immediately, or at any time, without notice to me, at its own election so to do, to buy or sell such commodities as I have contracted for, at the then market price, on my account, and from that time I have no claim or claims against said Hammond Elevator Company, for anything connected with such contract or contracts.

Sixth. That the market price on the Chicago Open Board of Trade for the time shall be considered the market price for grain and provisions in case of a dispute between us, and the market price on the New York stock exchange for the time shall be considered the market price for all stocks in case of any dispute as to what the market price was.

Seventh. That I am not and will not represent myself as being agent for said Hammond Elevator Company, but will represent that I have no authority to act for it. It is not responsible for anything that may be done by me.

Eighth. That any contract I may send said Hammond Elevator Company, either by mail, by wire or by telephone, although in abridged form, if accepted by it, shall be taken, construed and understood as an agreement on my part to receive and pay for the commodity bought from it, and to deliver the property sold to it, and as embodying on my part the terms of this agreement.

Ninth. That deliveries of grain and provisions may be made at the office of the Hammond Elevator Company, in the city of Hammond, to said Hammond Elevator Company, either in Chicago warehouse receipts or in their accepted orders calling for the commodity upon presentation.

Tenth. That stocks and bonds shall be delivered at the office of the Hammond Elevator Company, in the city of Hammond, or at the election of said Hammond Elevator Company, in New York city, or upon accepted sight orders calling for the commodity upon presentation.

Eleventh. That in all cases where said Hammond Elevator Company shall tender to me, at any place or manner as aforesaid, any commodity contracted to be purchased by me, if I do not take and pay for the same within twenty-four hours thereafter, said Hammond Elevator Company is hereby authorized at its election, and without notice to me, immediately, or at any time, to sell such commodity at the then market price on my account.

Twelfth. It is agreed that this contract shall not nor shall any other contract herein referred to or herein contemplated be assigned by me without the written consent of said Hammond Elevator Company, first had and obtained.

276 Form 4 C. B.

$4140\frac{00}{100}$ per annum.

Whereas, Central Grain & Stock Exchange of Hammond, Ind., has assigned and transferred its interest in and obligations under the within agreement, dated the tenth (10th) day of July, 1900, for the use of a wire between Chicago, Ills., and Galesburg, Ills., to Hammond Elevator Co. of Hammond, Ind., who has assumed said interest and obligations and desires to be recognized by the Western Union Telegraph Company as the party of the second part to said agreement, instead of Central Grain & Stock Exchange

Now, therefore, the Western Union Telegraph Company hereby consents to the assignment to and acceptance by Hammond Elevator Co. of said agreement, and of the rights and obligations thereunder, and Hammond Elevator Co. hereby accepts said agreement and assume- all the obligations, liabilities and duties of Central Grain & Stock Exchange thereunder, the consideration between the Western Union Telegraph Company and Hammond Elevator Co., thereunder, remaining the same as therein set forth.

This assent shall take effect as of the sixth (6th) day of January, 1903.

Witness our hands and seals this twenty-third (23rd) day of Jan., 1903.

THE WESTERN UNION TELEGRAPH COMPANY,

[SEAL.] By THOS. F. CLARK, *Vice-President.*

A. R. BREWER, *Secretary.*

HAMMOND ELEVATOR CO.
F. C. WILLIAMS, *Sec'y.*
R. H. McHIE, *Treas.*

Witness as to signature of Hammond Elevator Co.
C. W. BICKELL.

The foregoing is hereby assented to and confirmed by us.
CENTRAL GRAIN & STOCK EXCHANGE OF HAMMOND, INC.
JAMES F. SOUTHARD, *Pres't.*
C. W. BICKELL, *Sec'y.*

Witness as to signature of Central Grain & Stock Exchange
C. W. BICKELL.

Auditor notified Jul- 8, 1903.
B F. W. S. 12/3/03.

Case No. 26837.
Compl't's Exhibit No. 5 A., Wm. M. Booth, master in chancery, U. S. circuit court.

277 $4140.00 per annum.

It is mutually agreed by and between the parties to the foregoing agreement, dated the 10th day of July, 1900, for the use of a wire between Chicago, Ill., and Galesburg, Ill., that the same shall be and is hereby renewed and continued in force for the further period of one (1) year from the 16th day of July, 1902, until the 16th day of July, 1903, upon the same terms and conditions all and singular and at the same rental as therein set forth.

Witness our hands and seals this 24th day of July 1902.

[SEAL.] THE WESTERN UNION TELEGRAPH COMPANY,
By THOS. F. CLARK, *Vice-President.*

A. R. BREWER, *Secretary.*

CENTRAL GRAIN & STOCK EXCHANGE OF HAMMOND, INC.
JAMES F. SOUTHARD, *President.*
[SEAL.] C. W. BICKELL, *Secretary.*

Witness as to signature of Central Grain & Stock Exchange
R. T. MARR.

Auditor notified Aug. 6, 1902.
B 2.

Case No. 26,837.
Compl't's Exhibit No. 5, B. Wm. M. Booth, master in chancery, U. S. circuit court.

278 $4140.00 per annum.

It is mutually agreed by and between the parties to the foregoing agreement, dated the tenth day of July 1900, for the use of a wire between Chicago, Ills. and Galesburg, Ills., that the same shall be and is hereby renewed and continued in force for the further period of one (1) year from the sixteenth day of July 1901, until the sixteenth day of July 1902, upon the same terms and conditions all and singular and at the same rental as therein set forth.

Witness our hands and seals this 15th day of July 1901.

[SEAL.] THE WESTERN UNION TELEGRAPH COMPANY,
By THOS F CLARK, *Vice-President.*

A. R. BREWER, *Secretary.*

SIDMON McHIE, *Pres't.*
[SEAL.] C. W. BICKELL, *Sec'y.*

Witness as to signature of Central Stock & Grain Exchange
R. I. MARR.

A 7/17/01
Case No. 26837
Compl't's Exhibit No. 5, C. Wm. M. Booth, master in chancery U. S. circuit court.

279 Form No. 2. C. B.

Ldgd. Petty, P.

This agreement, made and entered into this tenth day of July 1900, by and between the Western Union Telegraph Company of the first part, and Central Stock & Grain Exchange of Chicago, Ill. of the second part witnesseth,

That for and in consideration of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows:

First. The first party agrees to furnish, during every week day, from nine (9) o'clock a. m., to five (5) o'clock p. m., throughout the term of this agreement, for the exclusive use of the second party, a telegraph wire connecting one office of the second party in Chicago, Ill. with one office of the second party in Galesburg, Ill., said wire to run via Dwight, Ills., and Streator, Ills., and also to furnish one set of Morse instruments, and local batteries and material to maintain said batteries at each of said offices, and the necessary main battery for the operation of said wire. Said wire shall be connected with the main offices of the first party in the places hereinbefore named, and it is understood and agreed that the first party may, at its option, either furnish said second party a single wire to be operated with Morse instruments, or a single wire connecting with one side or circuit of a wire to be operated with quadruplex instruments, in which latter case the other side or circuit of the quadruplex wire shall be at the disposal of the first party. The first party agrees to keep said wire in good working order and repair, it being understood and agreed that, in the event of the interruption of said wire, the second party shall immediately notify the first party of such interruption, and said party shall repair said wire without unnecessary delay. Until said wire shall have been repaired, the first party shall either furnish the second party another wire for its use or transmit its business between the places hereinbefore named, over other wires of the first party at one-half of its regular current day rates between said places; and it is understood and agreed that, in case of continuous interruption of said wire of more than one day's duration, the first party shall, at its option, either substitute another wire instead of the one herein set apart for the use of the second party, or abate the rental hereinafter specified during the continuance of said interruption. It is understood and agreed that the first party retains the right to use said wire, except and otherwise than during the hours in which the same is set apart for the use of the second party as herein provided.

Second. The second party hereby promises and agrees to pay to the first party for the use of said wire as herein specified the sum of forty-one hundred forty dollars ($4140.00) per annum, in equal monthly installments of three hundred forty five dollars ($345.00) at the beginning of each and every month during the continuance

Case No. 26837 Compl't's Exhibit No. 5 D Wm. M. Booth master in chancery U. S. circuit court. B 4.

of this agreement, and the second party also agrees to furnish and pay the salaries of operators to work said wire in its offices. Said operators shall be subject to the approval of, and satisfactory to, the first party, and shall not, while in the service of the second party, be employed by or have any business connection with any other party or parties without the consent of the first party, and said operators shall be subject to the established rules and regulations of the first party, but shall act as agents of the second party, in the transmission and receipt of messages over the wire herein provided for.

Third. It is understood and agreed that said wire herein provided to be set apart for the benefit of the second party as aforesaid, shall be used by it only in the transmission of messages concerning its own business and affairs, and that the said wire shall not either directly or indirectly be used in any manner for the transmission of messages for the public or for any person or persons other than the second party.

For the better securing of these undertakings the second party will, from time to time, and whenever thereto requested, furnish the first party with proper information as to the nature and extent of the telegraphic business done by the second party over the said wire.

And it is agreed that, in the event of the continuance by the second party of any use of said wire for the transmission of messages which, in the judgment of the first party, are not authorized or contemplated by this contract, after the attention of the second party shall have been called to the same by means of a letter from the first party, which letter may be left at the office of the second party in Chicago, then the first party may, at its option, either

I. Collect and receive from the second party, in addition to the rentals herein provided for, a toll charge upon each of such unauthorized messages at the then existing tariff rates for commercial business of the first party, or may

II. Terminate this agreement on one day's notice in writing to the second party of a desire to do so; the said notice to be sufficiently served if left at the said office of the second party in Chicago; and the first party may, at its option, terminate this agreement on one day's written notice to the second party, in case of any other violation by said party of any of the provisions of this agreement.

It is further understood and agreed that said wire, instruments and batteries shall at all times be and remain the property of the first party, and shall be accessible to its employees, and that nothing herein contained shall have or be construed as having the effect of vesting in the second party any right, title or interest to or in the same, except the right of using the same in the manner and during the term and upon the conditions herein provided.

It is expressly stipulated that the second party shall neither sell, nor give away, or bulletin in any place accessible to the general

public, any copy or copies of quotations of stock or other markets which it may send or cause to be sent for its own use over said wire, nor shall it permit any outside party to copy such quotations for use or publication.

Fourth. The second party agrees that during the continuance of this contract it will neither permit the wires of any other party to be connected with its said offices, nor permit any other wire to be connected with the wire herein provided for, without the consent of the first party. All messages sent by the second party except those transmitted on the wire herein provided for, shall be held to be subject to the printed rules and regulations of the first party, and shall be sent under and subject to the conditions incorporated in its customary message headings, with which said conditions the second party is familiar, it being understood and agreed that the first party shall in no wise be responsible for errors or delays or other defaults or mishaps in messages which may be transmitted by the operators employed in the offices of the second part- over the wire herein provided for.

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The provisions of this agreement shall be and continue in force for and during the term of one (1) year, from the sixteenth day of July 1900, until the sixteenth day of July one thousand nine hundred and one (1901), unless sooner terminated by the first party as provided in section third hereof, and the same shall not be assignable or assigned by said second party, except upon the written consent thereto of the first party.

Provided, that either party may terminate this agreement at any time upon the expiration of thirty days after written notice of an intention so to do, the second party to pay all rentals due up to the time of such termination.

The second party may have connected with said wire, additional offices not more than one-half mile distant from the first party's main office, if such additional offices can be reached by overhead wires, either at its termini, or at any intermediate place reached by it, at an additional yearly rental of five hundred dollars ($500) for each office so connected, the second party hereby agreeing to pay said rental monthly in advance, and to furnish and pay the operators as hereinbefore provided. In cases where such offices are more than one-half mile from the first party's main office, an additional charge will be made for the excess. Said additional offices shall be subject to the conditions all and singular of the foregoing agreement. No connection to be charged for at less than two months' rental.

In cases where it may be necessary to employ underground wires to connect such additional offices, special rates will be given therefor.

The first party will move said wire and instruments from one office to another upon the request and at the expense of the second party.

Contract between the parties hereto dated April 5, 1899, for the

use of a wire between Bloomington, Ill., and Galesburg, Ill., is hereby cancelled.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

[SEAL.] THE WESTERN UNION TELEGRAPH COMPANY,
By THOS. F. CLARK, *Vice-President.*

A. R. BREWER, *Secretary.*

SIDMON McHIE, *Pres't.*
[SEAL.] C. W. BICKELL, *Sec'y.*

Witness as to signature of Central Stock & Grain Exchange
R. T. MARR.

[Endorsed:] Cancelled. Agreement for use of wire between Chicago and Galesburg Western Union Telegraph Co. with Central Stock & Grain Exchange of Chicago Ill. Hammond Elevator Co. A. 8/29/00. Dated July 1900 Expires July 15 1901 Auditor notified Aug. 12, 1903.

281 Form 4 C. B.

$200\frac{00}{100}$ per annum.

Whereas, Central Grain & Stock Exchange of Hammond, Ind., has assigned and transferred its interest in and obligations under the within agreement, dated the twenty-eighth (28th) day of December, 1898, for the use of a wire between Geneva, Ills., and Aurora, Ills., to Hammond Elevator Co., of Hammond, Ind., who has assumed said interest and obligations and desires to be recognized by the Western Union Telegraph Company as the party of the second part to said agreement, instead of Central Grain & Stock Ex.

Now, therefore, the Western Union Telegraph Company hereby consents to the assignment to and acceptance by Hammond Elevator Co., of said agreement, and of the rights and obligations thereunder, and Hammond Elevator Co., hereby accepts said agreement and assumes all the obligations, liabilities and duties of Central Grain & Stock Exchange thereunder, the consideration between the Western Union Telegraph Company and Hammond Elevator Co. thereunder, remaining the same as therein set forth.

This assent shall take effect as of the sixth (6th) day of January, 1903.

Witness our hands and seals this twenty-third (23rd) day of Jan., 1903.

[SEAL.] THE WESTERN UNION TELEGRAPH COMPANY,
By THOS. F. CLARK, *Vice-President.*

A. R. BREWER, *Secretary.*

HAMMOND ELEVATOR CO.
F. C. WILLIAMS, *Sec'y.*
R. H. McHIE, *Treas.*

Witness as to signature of Hammond Elevator Co.,
C. W. BICKELL.

The foregoing is hereby assented to and confirmed by us.
CENTRAL GRAIN & STOCK EXCHANGE OF HAMMOND, INC.
JAMES F. SOUTHARD, *Pres't.*
C. W. BICKELL, *Sec'y.*

Witness as to signature of Central Grain & Stock Co.,
C. W. BICKELL.

Auditor notified Jul- 8, 1903.

Case No. 26837.
Compl't's Exhibit No. 6 A. Wm. M. Booth, master in chancery, U. S. circuit court.

282 $200.00 per annum. See general assignment clause.

It is mutually agreed by and between the parties to the foregoing agreement, dated the 28th day of December, 1900, for the use of a wire between Aurora, Ill., and Geneva., Ill., that the same shall be and is hereby renewed and continued in force for the further period of one (1) year from the 12th day of January 1902, until the 12th day of January 1903, upon the same terms and conditions all and singular and at the same rental as therein set forth.

Witness our hands and seals this 29th day of January 1902.

[SEAL.] THE WESTERN UNION TELEGRAPH COMPANY,
By THOS. F. CLARK, *Vice-President.*

A. R. BREWER, *Secretary.*

CENTRAL GRAIN & STOCK EXCHANGE OF HAMMOND, INC.
JAMES F. SOUTHARD, *President.*
[SEAL.] C. W. BICKELL, *Secretary.*

Witness as to signature of Central Grain & Stock Exchange
R. I. MARR.

Auditor notified Feb. 5, 1902.

Case No. 26,837.
Compl't's Exhibit No. 6 B. Wm. M. Booth, master in chancery U. S. circuit court.

283 Ledger M.

$200.00 per annum.

It is mutually agreed by and between the parties to the foregoing agreement, dated the 23rd day of January 1900, for the use of a wire between Aurora, Ill., and Geneva, Ill., that the same shall be and is hereby renewed and continued in force for the further period of one (1) year from the 12th day of January 1901, until the 12th day of January 1902, upon the same terms and conditions all and singular and at the same rental as therein set forth.

Witness our hands and seals this 28th day of February, 1901.

[SEAL.] THE WESTERN UNION TELEGRAPH COMPANY,
By THOS. F. CLARK, *Vice-President.*

A. R. BREWER, *Secretary.*

SIDMON McHIE, *Pres't.*
[SEAL.] C. W. BICKELL, *Sec'y.*

Witness as to signature of Central Stock & Grain Exchange.
R. I. MARR.

A. 3/13/01
Case No. 26837
Compl't's Exhibit No. 6 C. Wm. M. Booth master in chancery U. S. circuit court.

284 Form No. 2. C. B.

Renewal. Renewal.

Ldgd. Pty., B.

This agreement, made and entered into this 23rd day of January 1900, by and between the Western Union Telegraph Company of the first part, and Central Stock & Grain Exchange of Chicago, Ill. of the second part witnesseth,

That for and in consideration of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows:

First. The first party agrees to furnish, during every week day, from nine (9) o'clock a. m., to five (5) o'clock p. m., throughout the term of this agreement, for the exclusive use of the second party, a telegraph wire loop connecting one office of the second party in Aurora, Ill., with the second party's Chicago-Davenport leased wire at Geneva, Ill., and also to furnish one set of Morse instruments, and local batteries and material to maintain said batteries at each

of said offices, and the necessary main battery for the operation of said wire. Said wire shall be connected with the main offices of the first party in the places hereinbefore named, and it is understood and agreed that the first party may, at its option, either furnish said second party a single wire to be operated with Morse instruments, or a single wire connecting with one side or circuit of a wire to be operated with quadruplex instruments, in which latter case the other side or circuit of the quadruplex wire shall be at the disposal of the first party. The first party agrees to keep said wire in good working order and repair, it being understood and agreed that, in the event of the interruption of said wire, the second party shall immediately notify the first party of such interruption, and said party shall repair said wire without unnecessary delay. Until said wire shall have been repaired, the first party shall either furnish the second party another wire for its use or transmit its business between the places hereinbefore named, over other wires of the first party at one-half of its regular current day rates between said places; and it is understood and agreed that, in case of continuous interruption of said wire of more than one day's duration, the first party shall, at its option, either substitute another wire instead of the one herein set apart for the use of the second party, or abate the rental hereinafter specified during the continuance of said interruption. It is understood and agreed that the first party retains the right to use said wire, except and otherwise than during the hours in which the same is set apart for the use of the second party as herein provided.

Second. The second party hereby promises and agrees to pay to the first party for the use of said wire as herein specified the sum of two hundred dollars ($200.00) per annum, in equal monthly installments of sixteen & $\frac{67}{100}$ dollars ($16.67) at the beginning of each and every month during the continuance of this agreement, and the second party also agrees to furnish and pay the salaries of operators to work said wire in its offices. Said operators shall be subject to the approval of, and satisfactory to, the first party, and shall not, while in the service of the second party, be employed by or have any business connection with any other party or parties without the consent of the first party, and said operators shall be subject to the established rules and regulations of the first party, but shall act as agents of the second party, in the transmission and receipt of messages over the wire herein provided for.

Case No. 26,837 Compl't's Exhibit No. 6 D Wm. M. Booth master in chancery U. S. circuit court.

Third. It is understood and agreed that said wire herein provided to be set apart for the benefit of the second party as aforesaid, shall be used by it only in the transmission of messages concerning its own business and affairs, and that the said wire shall not either directly or indirectly be used in any manner for the transmission of

messages for the public or for any person or persons other than the second party.

For the better securing of these undertakings the second party will, from time to time, and whenever thereto requested, furnish the first party with proper information as to the nature and extent of the telegraphic business done by the second party over the said wire.

And it is agreed that, in the event of the continuance by the second party of any use of said wire for the transmission of messages which, in the judgment of the first party, are not authorized or contemplated by this contract, after the attention of the second party shall have been called to the same by means of a letter from the first party, which letter may be left at the office of the second party in Chicago, then the first party may, at its option, either

I. Collect and receive from the second party, in addition to the rentals herein provided for, a toll charge upon each of such unauthorized messages at the then existing tariff rates for commercial business of the first party, or may

II. Terminate this agreement on one day's notice in writing to the second party of a desire to do so; the said notice to be sufficiently served if left at the said office of the second party in Chicago; and the first party may, at its option, terminate this agreement on one day's written notice to the second party, in case of any other violation by said party of any of the provisions of this agreement.

It is further understood and agreed that said wire, instruments and batteries shall at all times be and remain the property of the first party, and shall be accessible to its employees, and that nothing herein contained shall have or be construed as having the effect of vesting in the second party any right, title or interest to or in the same, except the right of using the same in the manner and during the term and upon the conditions herein provided.

It is expressly stipulated that the second party shall neither sell, nor give away, or bulletin in any place accessible to the general public, any copy or copies of quotations of stock or other markets which it may send or cause to be sent for its own use over said wire, nor shall it permit any outside party to copy such quotations for use or publication.

Fourth. The second party agree- that during the continuance of this contract it will neither permit the wires of any other party to be connected with its said offices, nor permit any other wire to be connected with the wire herein provided for without the consent of the first party. All messages sent by the second party
285 except those transmitted on the wire herein provided for, shall be held to be subject to the printed rules and regulations of the first party, and shall be sent under and subject to the conditions incorporated in its customary message headings, with which said conditions the second party is familiar, it being understood and agreed that the first party shall in no wise be responsible for errors

or delays or other defaults or mishaps in messages which may be transmitted by the operators employed in the offices of the second party over the wire herein provided for.

The provisions of this agreement shall be and continue in force for and during the term of one (1) year, from the twelfth day of January 1900, until the twelfth day of January one thousand nine hundred and one, (1901), unless sooner terminated by the first party as provided in section third hereof, and the same shall not be assignable or assigned by said second party, except upon the written consent thereto of the first party.

Provided, that either party may terminate this agreement at any time upon the expiration of thirty days after written notice of an intention so to do, the second party to pay all rentals due up to the time of such termination.

The second party may have connected with said wire, additional offices not more than one-half mile distant from the first party's main office, if such additional offices can be reached by overhead wires, either at its termini, or at any intermediate place reached by it, at an additional yearly rental of five hundred dollars ($500) for each office so connected, the second party hereby agreeing to pay said rental monthly in advance, and to furnish and pay the operators as hereinbefore provided. In cases where such offices are more than one-half mile from the first party's main office, an additional charge will be made for the excess. Said additional offices shall be subject to the conditions all and singular of the foregoing agreement. No connection to be charged for at less than two months' rental.

In cases where it may be necessary to employ underground wires to connect such additional offices, special rates will be given therefor.

The first party will move said wire and instruments from one office to another upon the request and at the expense of the second party.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

THE WESTERN UNION TELEGRAPH
[SEAL.] COMPANY,
By THOS. F. CLARK, *Vice-President.*

A. R. BREWER, *Secretary.*

SIDMON McHIE, *Pres't.*
[SEAL.] C. W. BICKELL, *Sec'y.*

Witness as to signature of Central Stock & Grain Exchange,

——— ———.

[Endorsed:] See new contract. Agreement for use of wire between Aurora and Geneva. Western Union Telegraph Co. with Central Stock & Grain Exchange of Chicago, Ill., Hammond Elevator Co. A. 2/7/1900.

286 Form No. 2, C. B.

Renewal.

Legal. Petty, McG.

This agreement, made and entered into this twenty-third day of June, 1903, by and between the Western Union Telegraph Company of the first part, and Hammond Elevator Co., of Hammond, Ind., of the second part witnesseth,

That for and in consideration of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows:

First. The first party agrees to furnish, during every week day, from nine (9) o'clock a. m., to five (5) o'clock p. m., throughout the term of this agreement, for the exclusive use of the second party, a telegraph wire loop connecting one office of the second party in Aurora, Ills., with one office of the second party in Geneva, Ills., and also to furnish one set of Morse instruments, and local batteries and material to maintain said batteries at each of said offices, and the necessary main battery for the operation of said wire. Said wire shall be connected with the main offices of the first party in the places hereinbefore named, and it is understood and agreed that the first party may, at its option, either furnish said second party a single wire to be operated with Morse instruments, or a single wire connecting with one side or circuit of a wire to be operated with quadruplex instruments, in which latter case the other side or circuit of the quadruplex wire shall be at the disposal of the first party. The first party agrees to keep said wire in good working order and repair, it being understood and agreed that, in the event of the interruption of said wire, the second party shall immediately notify the first party of such interruption, and said party shall repair said wire without unnecessary delay. Until said wire shall have been repaired, the first party shall either furnish the second party another wire for its use or transmit its business between the places hereinbefore named, over other wires of the first party at one-half of its regular current day rates between said places; and it is understood and agreed that, in case of continuous interruption of said wire of more than one day's duration, the first party shall, at its option, either substitute another wire instead of the one herein set apart for the use of the second party, or abate the rental hereinafter specified during the continuance of said interruption. It is understood and agreed that the first party retains the right to use said wire, except and otherwise than during the hours in which the same is set apart for the use of the second party as herein provided.

Second. The second party hereby promises and agrees to pay to the first party for the use of said wire as herein specified the sum of

two hundred and 00/100 dollars ($200.00) per annum, in equal monthly installments of sixteen and 67/100 dollars ($16.67) at the beginning of each and every month during the continuance of this agreement, and the second party also agrees to furnish and pay the salaries of operators to work said wire in its offices. Said operators shall be subject to the approval of, and satisfactory to, the first party, and shall not, while in the service of the second party, be employed by or have any business connection with any other party or parties without the consent of the first party, and said operators shall be subject to the established rules and regulations of the first party, but shall act as agents of the second party, in the transmission and receipt of messages over the wire herein provided for.

Case No. 26,837. Compl't's Exhibit No. 7. Wm. M. Booth, master in chancery, U. S. circuit court.

Third. It is understood and agreed that said wire herein provided to be set apart for the benefit of the second party as aforesaid, shall be used by it only in the transmission of messages concerning its own business and affairs, and that the said wire shall not either directly or indirectly be used in any manner for the transmission of messages for the public or for any person or persons other than the second party.

For the better securing of these undertakings the second party will, from time to time, and whenever thereto requested, furnish the first party with proper information as to the nature and extent of the telegraphic business done by the second party over the said wire.

And it is agreed that, in the event of the continuance by the second party of any use of said wire for the transmission of messages which, in the judgment of the first party, are not authorized or contemplated by this contract, after the attention of the second party shall have been called to the same by means of a letter from the first party, which letter may be left at the office of the second party in Hammond, Ind., then the first party may, at its option, either

I. Collect and receive from the second party, in addition to the rentals herein provided for, a toll charge upon each of such unauthorized messages at the then existing tariff rates for commercial business of the first party, or may

II. Terminate this agreement on one day's notice in writing to the second party of a desire to do so; the said notice to be sufficiently served if left at the said office of the second party in Hammond, Ind.; and the first party may, at its option, terminate this agreement on one day's written notice to the second party, in case of any other violation by said party of any of the provisions of this agreement.

It is further understood and agreed that said wire, instruments and batteries shall at all times be and remain the property of the first party, and shall be accessible to its employees, and that noth-

ing herein contained shall have or be construed as having the effect of vesting in the second party any right, title or interest to or in the same, except the right of using the same in the manner and during the term and upon the conditions herein provided.

It is expressly stipulated that the second party shall neither sell, nor give away, or bulletin in any place accessible to the general public, any copy or copies of quotations of stock or other markets which it may send or cause to be sent for its own use over said wire, nor shall it permit any outside party to copy such quotations for use or publication.

Fourth. The second party agree- that during the continuance of this contract it will neither permit the wires of any other party to be connected with its said offices, nor permit any other wire to be connected with the wire herein provided for, without the consent of the first party. All messages sent by the second party, except
287 those transmitted on the wire herein provided for, shall be held to be subject to the printed rules and regulations of the first party, and shall be sent under and subject to the conditions incorporated in its customary message headings, with which said conditions the second party is familiar, it being understood and agreed that the first party shall in no wise be responsible for errors or delays or other defaults or mishaps in messages which may be transmitted by the operators employed in the offices of the second party over the wire herein provided for.

Unless sooner terminated by the first party as provided in section third hereof, the provisions of this agreement shall be and continue in force for and during the term of one (1) year, from the twelfth day of January, 1903, until the twelfth day of January, one thousand nine hundred and four (1904), and shall continue thereafter until the expiration of thirty (30) days after written notice shall have been given, after the close of said term, by either party to the other of an intention to terminate the same, and the same shall not be assignable or assigned by said second party, except upon the written consent thereto of the first party.

Provided, that either party may terminate this agreement at any time upon the expiration of thirty days after written notice of an intention so to do, the second party to pay all rentals due up to the time of such termination.

The second party may have connected with said wire, additional offices not more than one-half mile distant from the first party's main office, if such additional offices can be reached by overhead wires, either at its termini, or at any intermediate place reached by it, at an additional yearly rental of five hundred dollars ($500) for each office so connected, the second party hereby agreeing to pay said rental monthly in advance, and to furnish and pay the operators as hereinbefore provided. In cases where such offices are more than one-half mile from the first party's main office, an additional charge will be made for the excess. Said additional offices shall be subject to the conditions all and singular of the foregoing agree-

ment. No connection to be charged for at less than two months' rental.

In cases where it may be necessary to employ underground wires to connect such additional offices, special rates will be given therefor.

The first party will move said wire and instruments from one office to another upon the request and at the expense of the second party.

In witness whereof, the parties hereto have hereunto set [SEAL.] their hands and seals the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,
By THOS. F. CLARK, *Vice-President.*
HAMMOND ELEVATOR CO.
F. C. WILLIAMS, *Sec'y.*
R. H. McHIE, *Treas.*

A. R. BREWER, *Secretary.*

Witness as to signature of Hammond Elevator Co.:
C. W. BICKELL.

[Endorsed:] R. Agreement for use of wire between Aurora and Geneva. Western Union Telegraph Co. with Hammond Elevator Co., of Hammond, Ind.

288 (Endorsed:) Filed Dec., 15, 1903, Marshall E. Sampsell, clerk.

289 And on to-wit: the 15th day of December, 1903, came William M. Booth, master in chancery to whom said cause was referred *to* upon the defendant's motion to quash the service of process herein, and files his report thereon in words and figures following to-wit:

Master's Report.

United States Circuit Court, Northern District of Illinois, Northern Division. In Chancery.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY.
} Bill. No. 26837.

Master's report.

To the Honorable Christian C. Kohlsaat, judge of said court:

The undersigned master in chancery, to whom the above cause was heretofore referred, upon the defendant's motion to quash the service of process herein, respectfully reports as follows:

That pursuant to said reference he caused the parties to said cause to attend before him on the 21st day of October, 1903, and on various other days subsequent thereto, as more fully appears in the transcript filed herewith; and thereupon certain oral and documentary evidence was adduced on behalf of the respective parties, and certain proceedings were had, all of which documentary evidence, together with a full, true and complete transcript and report of said oral evidence and proceedings are filed herewith, and constitute all of the evidence and proceedings had and taken before the undersigned master in said cause. And thereupon said cause was argued by counsel, and the master having considered the evidence and the arguments of counsel has reached the following findings and conclusions herein, viz.:

290

I.

The questions to be passed upon under the reference herein are:

1. Was the defendant, at the time of service, doing business in this district so as to render it subject to service of process in an action in this court?

2. Were the correspondents of defendant, Babb and Battle & Dickes, who were served as agents of defendant, in reality such agents that service upon them was equivalent to service upon the defendant?

II.

The defendant is a corporation organized under the laws of the State of Delaware, and a citizen of that State, and has its principal office and place of business at Hammond in the State of Indiana.

291

III.

The defendant at the time of and for about six months prior to the service of the subpœna herein, maintained a place of business at Hammond, Indiana, and had under leases from the Western Union Telegraph Company the exclusive use (from shortly before 9 a. m. to shortly after 2 p. m. of each business day) of certain telegraph wires running from its said place of business to certain offices in different cities in Illinois, including an office in Peoria, in the possession and control of the A. H. Babb mentioned in the marshal's return to the subpœna herein, and another in Aurora, in the possession and control of the firm of Battle & Dickes, also mentioned in the marshal's return. In the written and printed leases of these wires signed by defendant, the offices of these "correspondents" are designated in the printed portion of said leases as offices of the defendant. Said leases are regular printed forms prepared and used by the Western Union Telegraph Company.

The cost or rental of these wires was paid to the said telegraph company by the defendant.

292 IV.

Over these wires the defendant causes to be transmitted (between 9 a. m. and 2 p. m. of each business day) continuous market quotations of the New York stock exchange to said Battle & Dickes and said Babb, who post these quotations upon blackboards in their respective offices. In the vernacular of the business Battle & Dickes and Babb are called "correspondents." Customers resorting to the correspondent's office and desiring to trade, give a verbal or written order to buy or sell grain or stock, which is transmitted by the correspondent in his own name over the private wire running into said office as aforesaid by the telegraph operator therein, to defendant's office at Hammond as an offer by the correspondent to buy from or sell to the defendant. These orders are for lots of ten shares of stock, or multiples thereof, and lots of one thousand bushels of grain, and multiples thereof, Sometimes the price is mentioned by the customer and sometimes it is not. In the latter case it is understood that the trade is to be made at whatever the market is. When the order is given the correspondent exacts from the customer a margin, unless the customer already has moneys on deposit with the correspondent. In some cases when the customer is of known financial responsibility, the correspondent does not immediately call for any money on the trade.

293 The amount of such margin exacted is fixed by the correspondent, and varies somewhat according to the condition of the market. In the case of the correspondent Babb the margin exacted from the customer on stocks is two dollars per share.

V.

The telegraph operator in sending each order gives it a number, by which the trade, if made, is subsequently designated and known on all statements and accounts passing between the defendant and the correspondent, and also on the books of the correspondent. The trade is also designated and identified by this number in all telegrams passing between the correspondent and the defendant respecting it. To these telegraphic orders telegraphic replies are sent back (when the defendant accepts the trade) by the defendant, over this same wire, notifying the correspondent that defendant has accepted the trade, giving the number of the trade and the price at which the trade is accepted. Upon the receipt of the telegram, the correspondent notifies the customer of the acceptance of the order. If the defendant refuses to accept the trade, as it frequently does, the correspondent is so informed over the wire. The defendant has no dealings whatever with the customer and is not informed

294 of his name, and has no way of identifying him. It knows its transactions as "trades" and by number only, and has no dealings except with the correspondent.

As soon as the telegraphic order is received and accepted by the

defendent, a fixed amount of margin is charged up by it on i
books against the correspondent, viz.: ten dollars per ten shares
stock, and ten dollars per 1000 bushels of grain.

VI.

The correspondent charges his customer a commissiom of o
eighth of a cent a bushel on grain, and in a stock deal of twent
five cents a share, or $2.50 on each ten shares dealt in. The corr
spondents Battle & Dickes do not do any grain business, and t
correspondent Babb does very little in that commodity.

The defendant keeps a regular book account with its correspon
ent, and in addition to charging up the margin against him
above stated, it makes an arbitrary charge against him on each de
which is called on its statements rendered to correspondents "wi
service," meaning a charge made for the use of the private wir
This charge is 50 cents on each ten shares of stock. On the book
of Battle & Dickes this item is entered as "charge."

295 In its transactions with Babb, the defendant makes n
charge for wire service on transactions in grain, but only o
stock transactions. In addition to the above charge the defendan
charges the correspondent fifty dollars per month for the stoc
quotations and market "gossip" which are sent daily over th
private wire in question.

VII.

Each day the defendant enters upon a statement (see Com
plainant's Exhibit 4 and Defendant's Exhibit 1) which it tha
day sends to the correspondent, each trade it has that da
accepted from such correspondent. This open trade is entere
on the debit side of the statement by its number, and a sur
as margin, equal to $10 on each 1000 bushels of grain, an
$10 on each ten shares of stock, is charged against the co
respondent on such trade. Upon the credit side of these statement
any transactions closed that day are entered, and the statement i
mailed so that the correspondent gets it next morning. If it show
a debit balance, derived in the manner hereinafter explained, th
correspondent (unless the amount is small, in which case it i
allowed to stand) deposits the approximate amount in round figure
in a bank in his city (Aurora, in the case of Battle & Dickes
296 and Peoria in the case of Babb) to the credit of the defend
ant, except as stated below. The defendant thus maintain
an active bank account in each of said banks. For two or thre
months last past said deposits have been made to the credit of th
First National Bank of Hammond, Indiana, but up to and includin
July 10, 1903, they were made to the credit of the defendant a
above stated. If there are closed trades upon a statement of an
day, and this results in a balance to the credit of the correspondent
instead of a debit, a check of defendant, payable to the correspond

ent, and usually drawn upon the same local bank where the deposits are made to defendant's credit as aforesaid, accompanies the statement. Thus as a general thing, the balance due on each day's transactions, as between the defendant and the correspondent, is settled the next day, or approximately settled.

VIII.

These statements are on regular printed blanks of the defendant, which contain on the front page among other printed matter, including the defendant's corporate name, the statement, "We have no agents."

The back of said statements is practically filled with printed matter of which the following is a portion:

297 "*Form of Agreement Assented to by All who Deal with the Hammond Elevator Company (Incorporated.)*"

"In consideration of the Hammond Elevator Company Incorporated, a corporation doing business in the city of Hammond, county of Lake and State of Indiana, consenting through its manager to deal and to contract with me as principal, in buying and selling commodities, I hereby agree:

First. In all cases where I shall purchase from or contract to purchase from or shall sell to or contract to sell to said Hammond Elevator Company any commodity, I will receive and pay for the commodity purchased or contracted to be purchased from it, and will deliver the commodity sold or contracted to be sold to it."

(Here follow certain provisions not deemed material, but which may be seen upon the back of Complainant's Exhibit No. 2.)

"*Seventh.* That I am not and will not represent myself as being agent for said Hammond Elevator Company, but will represent that I have no authority to act for it. It is not responsible for anything that may be done by me."

298 IX.

On all trades the defendant looks only to the correspondent. In case of a loss if the correspondent has failed to secure sufficient margins from his customer, and is unable to collect the amount from him, the correspondent must stand whatever loss is incurred. The defendant charges up and retains the amount of its charge for wire service, in any event, as well as all losses of the correspondent on trades.

X.

Each $10 deposited margins each 1000 bushels of grain seven-eighths of a cent only as between the correspondent and his customer, instead of a full cent, the correspondent's commission aforesaid being deducted therefrom. For the same reason each $10 deposited

margins each ten shares of stock only three-fourths of a dollar per share, as between the correspondent and his customer. But as between the correspondent and the defendant each $10 charged up against the correspondent margins the trade on 1000 bushels of grain a full cent, and a stock trade one dollar per share. To illustrate: If the correspondent accepts an order for grain from a customer and fills the order by purchasing the grain from the defendant at 70 cents, the exhaust point on that trade as between
299 the correspondent and his customer, is 69⅛ cents, and if the market reaches the latter point the correspondent directs the defendant to close the trade at that point, or else he requires the customer to put up additional margins.

But if the correspondent gives no order to close the trade it is not closed by the defendant at 69⅛, nor at 69, but when it reaches the latter point an additional margin is charged up against the correspondent, and this is continued until the correspondent orders the trade closed.

XI.

A trade when once opened is closed either upon an order given by the customer to the correspondent and by the latter transmitted over the wire as his own order, and accepted by the return message, as in the opening order, or upon a similar order given by the correspondent because the customer fails to put up a further margin when required. In either case the closing order is sent by the correspondent in his own name. When closed, the trade is entered upon the aforesaid daily statement sent by the defendant, upon the credit side thereof, by number, and in such a way as to show a credit made up of all the margins previously charged against the trade, plus the profits, if any, on the trade, or minus the loss, if the trade is closed out at a loss. There are no entries in such statement
300 under the head of commissions, and the correspondent's charges of that character are not shown separately from the net result of each trade. On the debit side is entered in a lump sum the defendant's charge of 50 cents of each 10 shares of stock traded in on that day. This entry is made under the letters "W. S." standing for wire service. No statements are rendered by the correspondent to the defendant, and he keeps no book account with it.

The difference between the sum of these credit items on the statement and the sum of the debit items (margins and remargins charged, and said charge for wire service) constitutes the debit or credit balance, settled by deposit or check, as above stated. If the result of a particular trade is a profit to the customer, the correspondent pays the profit (plus the margins deposited) less the commission, to the customer, or retains it as a credit balance of the customer for further transactions. If the trade is a losing one, and has not been adequately margined by the customer, the correspondent collects from the customer if he can. Whether he does or not, the defendant does not lose, since, as above stated, the defendant

charges up all losses against the correspondent, leaving the latter to deal with his customer as he sees fit.

301 XII.

Summarized, the manner of conducting the business is this:

The defendant, to enable its correspondents to gather business consisting of trades in grain or stocks, from persons living in the cities where these correspondents are located, provides and maintains private wires running from its office in Hammond, to the office of the correspondent. Over this wire it sends quotations, by the display of which on a blackboard, the correspondent encourages customers to trade. The correspondent receives numerous orders daily from those frequenting his office, and sends them in his own name over this leased wire to the defendant, which accepts them when the state of the market justifies, by return message over the same wire, the contents of which are communicated by the correspondent to the customer. The individuality of each trade is preserved throughout by a number given to it by the correspondent's operator at the outset.

Except in the case of a losing trade, where he has failed to protect himself by securing adequate margins from his customer, and is unable to collect from the latter the amount of loss, the correspondent participates neither in the loss nor the profits incurred in a trade.

302 He derives as his compensation a fixed sum, whether the transaction results in a profit to defendant or to the customer. Through daily statements and daily settlements of the balance shown thereby, the correspondent remits to the defendant, through its local bank, whatever amounts are shown to be due from him to the defendant for margins, wire service, etc.

In his dealings with the customer, the correspondent exacts such margins as he sees fit, in cash, the amount depending somewhat on the course of the market, or, in some cases, charges such margins to the customer, when he has an account with him. In settling with the customer, if the trade shows a profit, the correspondent pays back to the customer his deposit plus the profit, deducting only his commissions of $1.25 per 1000 bushels of grain, and $2.50 per ten shares of stock. If the trade is a losing one and has been closed so as to just exhaust the margin, the customer receives back nothing and has nothing further to pay. If a loss has been incurred greater than the margin, the correspondent calls upon the customer to make the loss good; if he does not do so the loss is the correspondent's.

The correspondent as a rule orders the defendant to close each trade at such a point as will leave unexhausted sufficient of
303 the margins which it has charged against the correspondent to cover the correspondent's commissions of $1.25 per 1000 bushels of grain and $2.50 per ten shares of stock. This leaves a credit for those amounts to the correspondent on each transaction. As against him is entered the defendant's charge for wire service, of

50 cents per ten shares of stock, so that in fact the net amount ultimately realized by the correspondent is $1.25 per 1000 bushels of grain, and $2 per ten shares of stock. But as above stated, the correspondents Battle & Dickes do not trade in grain.

XIII.

Each party to this case accuses the other of being a "bucket shop;" but so far as the issues involved in this reference are concerned, it appears to the undersigned master to be utterly immaterial whether the parties, either or both, are gambling concerns or corporations engaged in legitimate business. He has therefore endeavored to eliminate all such accusations entirely from consideration.

It is frankly admitted by defendant's counsel that the defendant does not desire to be subject to suit before the State and Federal courts of every State and district where he has correspondents, and that it has endeavored so to arrange and conduct its business as to avoid such a contingency.

304 It is apparent that in order to transact business in a State foreign to the place of its principal office so as to subject it to suit in such foreign State, a corporation must transact such business through an agent representing it in such foreign State, whose connection with the corporation is of such a substantial character that the service of process on the agent is in law equivalent to service upon the corporation itself.

In this case the evidence shows a formal contract between the corporation and the alleged agent to the effect that the parties shall deal as principals and that the relation of principal and agent shall neither exist nor be held out to exist. There is, moreover, no evidence that the correspondents Babb or Battle & Dickes have ever claimed or represented themselves to be agents of the defendant.

XIV.

If, therefore, such agency does exist in the present case, it must be as a matter of law, and contrary to the expressed intention and contract of the parties.

It is claimed by the complainant that such is the real situation; that the correspondent is the agent of the defendant, through
305 whom the defendant deals with the customer; that the real principals in the transaction are the defendant and the customer; that the agent's duty is merely to secure the customer and collect the necessary margins and transmit them to the defendant, with the customer's order, receive the defendant's reply and communicate it to the customer, and when a trade is closed, pay to the customer the net profits if any, and that for those services the defendant charges the customer a commission of which it pays four fifths to the correspondent for his services, and retains one fifth as its own share.

XV.

It is also claimed that the trades are all made and closed in Illinois, the margins collected there, and the commissions also collected there, so that in short the defendant is transacting a substantial part of its business in the State of Illinois and in this Federal district.

The master is unable to take this view of the case for the following reasons:

First. The actual contract of the parties provides that they shall deal with each other as principals and not as principal and agent, and thus indicates their intention not to sustain such relation.

Second. In the opinion of the master the actual transactions
306 of the defendant and its correspondents are such as to carry out that intention.

There can be no question that toward the customer the correspondent bears the relation of an agent to his principal. The customer knows that the correspondent is not selling stocks to him or buying stocks from him, but is merely taking his order for transmission. Hence the correspondent's charge to the customer for his services is properly called a commission. The customer does not direct the correspondent from whom he is to purchase, or to whom he is to sell, and the latter is at liberty to purchase from or sell to the defendant, or elsewhere, as he chooses. In point of fact, perhaps because of the facilities offered by the private wire, he almost invariably does purchase from or sell to the defendant.

But the defendant knows nothing of the customer. All its orders come from the correspondent in his own name. All funds received by it are sent to it, through the bank, by the correspondent. All its statements are rendered to the correspondent. All its charges are made against, and all its credits entered in favor of the correspondent. Indeed, so far as the evidence shows, there is no ground for claiming that the defendant knows that the correspondent has any customers, or that he is not dealing solely on his own account.

307 XVI.

It is pointed out that the defendant's charge for wire service is a regular fixed per centage of the commissions charged by the correspondent, which is claimed to indicate that it is really commissions under the guise of wire service; and that such a charge on transactions of any magnitude would be a ver- exorbitant charge for the use of the wire. It may be true that a charge of five dollars for a trade involving 100 shares would appear to be a liberal charge for the use of the wire, but there is no reason why the parties might not agree to such a charge. Neither is there any inherent improbability that they would do so. It is true the actual use of the wire might be no greater than on a ten share transaction; but it is also true that the correspondent's labor and expense would be no greater on a 100 share transaction than on a 10 share transac-

tion, yet in the one case he would receive ten times as much compensation as in the other. The same holds true of large and small transactions by the board of trade brokers, real estate brokers, etc.

XVII.

It is to be noted also that the correspondent has no authority to bind the defendant, or make trades for it.

308 He cannot accept a customer's order for the defendant, but must send it over the wire as an offer to buy or sell. Sometimes the defendant refuses to accept it. If it does accept it, the correspondent is so informed by wire, and communicates the fact to the customer. Complainant's counsel argues from this that the trade is made in Illinois, but the contrary appears to the master to be the fact. The offer is made at Hammond; it is accepted or refused at Hammond; if accepted, the margin required is charged up at Hammond against the correspondent; the profits or losses are made and figured up at Hammond; the defendant's charge for wire service is made and entered at Hammond; and the daily statement is made at Hammond and forwarded by mail to the correspondent. If it shows a balance in his favor it is accompanied by a check which is drawn at Hammond, usually on the local bank in the correspondent's city. If it shows a balance against him, he deposits the amount due in the same local bank to the defendant's credit, or to the credit of the Hammond bank. But in doing this he is not acting as the defendant's agent, but merely on his own behalf, paying his own indebtedness through the channel selected by his creditor.

The fact that the defendant has various bank accounts in Illinois does not in the master's opinion prove that it is doing business there, nor render it subject to the jurisdiction of the Illinois courts, although such banks would appear to sustain the relation of agents to

309 the defendant as much or more than the correspondents do.

XVIII.

The master has not considered that the statement in the wire leases that the wires run from one office of the defendant to another office of the defendant is entitled to any weight, since it is a mere printed form prepared and used by the telegraph company, and not such a paper as can properly be considered an admission on behalf of the defendant of which the complainant can take advantage.

XIX.

The language of the marshal's returns on the summons describing Babb and Battle & Dickes as "agents" of the defendant has also been disregarded as not having any probative force or raising any presumption that the parties served were such agents.

XX.

For the reasons above stated, the master is of opinion and so finds, that the defendant is not and was not at the time of the service of process herein doing business in the State of Illinois
310 and the northern district thereof, so as to subject it to service of process in an action in this court; and that A. H. Babb, C. S. Battle and J. L. Dickes are not and were not at the time of such service, nor is, nor was any or either of them such agent or agents of the defendant that service of process against them was a good service on the defendant.

The master therefore respectfully recommends that the motion of the defendant to quash the service of process herein be sustained.

Respectfully submitted,

WILLIAM M. BOOTH,
Master in Chancery of said Court.

(Endorsed:) Filed Dec. 15, 1903. Marshall E. Sampsell, clerk.

311 And on to-wit: the 15th day of December, in the July term of said court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

Order of December 15, 1903: *Leave to Amend Bill Instanter.*

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY. } 26837.

On motion of complainant, it is ordered that complainant have leave to amend its bill instanter by making The Western Union Telegraph Company a party defendant, and filing certain amendments thereto instanter.

It is further ordered that complainant have leave to file instanter a supplemental bill herein.

It is further ordered that all parties hereto file their exceptions to the report of William M. Booth, Esq., master this day filed by two o'clock p. m. December 19, 1903, and that said exceptions to the master's report, and motion for a temporary injunction herein be placed at the head of the contested motion calendar for Monday, December 21, 1903.

And on the same day to-wit: the 15th day of December, 1903 came the complainant in said entitled cause by its solicitor and by leave of court first had and obtained filed in the clerk's office of said court its certain amendments to bill in words and figures following to-wit:

312 *Amendments to Bill.*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY.

Amendments to bill filed herein by leave of court.

1. Amend the preliminary clause of said bill by inserting after the words "Hammond Elevator Company," the words "and Western Union Telegraph Company."

2. Amend clause I. of said bill by adding thereto the following: "And said Western Union Telegraph Company is a corporation organized under the laws of the State of New York, and is a citizen of said State of New York."

3. Amend clauses IX. and X. of said bill by inserting after the word "defendant," wherever it appears in either of said clauses, the words "Hammond Elevator Company."

4. Amend clause XI. of said bill by adding thereto the following: "And your orator is informed and believes, and therefore charges the fact to be, that said defendant, Hammond Elevator Company, is attempting, and will attempt, by threats of litigation, and in other ways, to induce the defendant, Western Union Telegraph Company to violate its said contract with your orator,
313 and to furnish said defendant, Hammond Elevator Company, your orator's said quotations, without receiving from said defendant an application, as in said contract of April 15th, 1901, provided: and that said defendant Hammond Elevator Company, will bring suits in other jurisdictions against said Western Union Telegraph Company (and without joining your orator as defendant) to force said Western Union Telegraph Company to furnish said quotations to it, in violation of said contract of April 15th, 1901; and your orator fears that said Western Union Telegraph Company will yield to said threats and comply with any order or judgment so obtained unless restrained by the order of this court."

5. Amend the prayer of said bill so as to read as follows:

"To the end, therefore, that the said Hammond Elevator Company, and its confederates when discovered, and said Western Union Telegraph Company, may true, direct and complete answer make to this bill, but not under oath (answer under oath being hereby waived); and that this cause be referred to a master with directions to take evidence concerning the locations of all wires used by said defendant Hammond Elevator Company, in the receipt of said quotations, and any other evidence which is pertinent

to ascertain what other persons are aiding or assisting said defendant Hammond Elevator Company, in the receipt of said quotations, or are receiving said quotations in conjunction with said defendant Hammond Elevator Company, or otherwise, or are furnishing said quotations to said defendant Hammond Elevator Company; and that said persons when discovered, may be made parties defendant hereto, and that a temporary injunction may immediately issue, and upon the final hearing hereof
314 be made perpetual, restraining said defendant Hammond Elevator Company (and said confederates when discovered), either when acting in its or their own behalf, or as the agent of any other person, firm or corporation, and also each and every of the officers, directors, agents, employés, and servants, of said defendant Hammond Elevator Company (and said confederates when discovered), from receiving, obtaining, using, selling, or distributing, directly or indirectly, said quotations of your orator, and from having, maintaining, or permitting any telegraph wire running into or through its or their offices, over which said quotations are passing, and from aiding, abetting, or assisting any other person, firm or corporation in receiving, selling, or distributing said quotations unless and until said defendant Hammond Elevator Company, or other person or persons so receiving said quotations shall first have become entitled, in the manner specified in the contracts between your orator and said telegraph companies, to receive said quotations from one of the telegraph companies which your orator shall have authorized to distribute said quotations; and also restraining the said defendant, Hammond Elevator Company, its agents and attorneys, from instituting, or taking any further steps or proceedings in, or any further steps to secure a judgment in, any proceeding commenced by said Hammond Elevator Company in this or any other jurisdiction, to compel said defendant Western Union Telegraph Company to deliver to said defendant Hammond Elevator Company, the quotations of your orator, before said Hammond Elevator Company shall have brought itself within the class of persons entitled to said quotations under said contracts of your orator with said telegraph companies, and before said Hammond Elevator Company shall have entitled itself to said quotations in
315 the manner provided in said contract of April 15th, 1901: and enjoining said defendant Western Union Telegraph Company, its officers and agents, from delivering said quotations to said Hammond Elevator Company, before said telegraph company shall have become entitled to deliver said quotations to said Hammond Elevator Company under said contract of April 15th, 1901; and that your orator may have such other and further relief in the premises as will fully protect your orator's right in said quotations, and as to your honors shall seem meet.

May it please your honors to grant unto your orator a preliminary and permanent injunction against the said defendants above prayed, and also a writ of subpœna of the United States, directed to

the Hammond Elevator Company and Western Union Telegraph Company, commanding them on a day certain to appear and answer this bill, and to abide by and perform such decree as may be entered by this court."

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HENRY S. ROBBINS, *Its Solicitor.*

HENRY S. ROBBINS, *Counsel.*

316 UNITED STATES OF AMERICA, }
Northern District of Illinois, Cook County, } *ss:*

R. G. Chandler being first duly sworn, deposes and says that he is president of the complainant; that he has read the foregoing amendments to the bill herein, and knows the contents thereof, and that the said amendments and said bill as so amended, are true of his own knowledge, except as to the matters in said amendments and in said bill as amended stated to be upon information and belief, and as to those matters, he believes the same to be true.

R. G. CHANDLER, *Pres't.*

Subscribed and sworn to before me this 15th day of December, 1903.

EARL C. HALES,
Notary Public.

[NOTARIAL SEAL.]

(Endorsed:) Filed Dec. 15, 1903 Marshall E. Sampsell, clerk.

317 And on the same day to-wit: the 15th day of December, 1903, came the complainant in said entitled cause by its solicitor and by leave of court first had and obtained filed in the clerk's office of said court its certain supplemental bill in words and figures following to-wit:

318 *Supplemental Bill.*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

BOARD OF TRADE OF THE CITY OF CHICAGO }
vs.
HAMMOND ELEVATOR COMPANY. }

Board of Trade of the City of Chicago, brings this, its supplemental bill, against the Hammond Elevator Company, and the Western Union Telegraph Company, and thereupon your orator complains and says:

I. That it filed its original bill against the Hammond Elevator Company in this court on the 8th day of July, 1903, wherein it prayed among other things, for a temporary and permanent injunction against the Hammond Elevator Company, to restrain it from purloining the quotations of your orator, and for other relief as in said bill stated. That on the 15th day of December, 1903, said bill was amended, and The Western Union Telegraph Company was made party defendant thereto.

And your orator further shows that since the filing of said original bill viz., on the 14th day of November, 1903, the defendant, Hammond Elevator Company, filed in the superior court of Lake county, State of Illinois, a petition against said Western Union Telegraph Company for a mandamus to compel said Western Union Telegraph Company to deliver to said Hammond Elevator Company the continuous quotations of your orator. That at the time
319 of filing said petition said Hammond Elevator Company had not, and has not yet, signed and delivered to said telegraph company an application for said quotations in the form prescribed by said contract of April 15th, 1901, between your orator and said Western Union Telegraph Company and the Postal Telegraph Cable Company, set out in the original bill herein; nor has said Hammond Elevator Company entitled itself to receive said quotations from said Western Union Telegraph Company in the manner prescribed by said contract, nor had it at the time of filing said petition, nor has it since, brought itself within the class of persons entitled to said quotations as defined in said contract of April 15th, 1901, and said Hammond Elevator Company seeks by said proceedings in court to acquire the continuous quotations of your orator without becoming entitled thereto as provided in said contract, and by such proceedings seeks to impair the power and jurisdiction of this court to determine in this suit whether said Hammond Elevator Company is entitled to said quotations of your orator; and that upon said petition an alternative writ of mandamus has issued and been served on said telegraph company, which is returnable on the 22nd day of December, 1903, as will more fully appear from a copy of said writ and of said petition hereto attached and made a part hereof as Exhibit "A."

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief herein, and in its said original bill, prayed, and make answer hereunto, but not under oath (answer under oath being hereby waived); and that said Hammond Elevator Company, in addition to the matters in said original bill as amended prayed, may be enjoined provisionally and
320 perpetually from taking any further steps in, or asking the court to proceed further in, said proceeding, and from causing any judgment or order to be entered therein, and from taking any steps to put into execution or enforce, or to punish said Western Union Telegraph Company or its agents for failure to comply with, any order or judgment that may be entered in said cause in the

superior court of Lake county; and for such other or further relief in the premises as the nature of the case may require.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HENRY S. ROBBINS, *Its Solicitor.*

HENRY S. ROBBINS, *Counsel.*

321 UNITED STATES OF AMERICA, *Northern District of Illinois, Cook County,* } ss:

R. G. Chandler, being first duly sworn, deposes and says that he is president of the complainant; that he has read the foregoing supplemental bill, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters he believes said supplemental bill to be true.

R. G. CHANDLER, *Pres't.*

Subscribed and sworn to before me this 15th day of December, A. D. 1903.

[NOTARIAL SEAL.]

EARL C. HALES,
Notary Public.

322 EXHIBIT "A."

Copy.

STATE OF INDIANA, *Lake County,* } ss:

The State of Indiana to the sheriff of Lake county, Greeting:

You are hereby commanded to summon the Western Union Telegraph Company to appear in the Lake superior court, before the judge thereof, at the court house in Hammond, Ind., on the 22nd day of December, 1903, being the 2nd judicial day of the December term, 1903, of said court, to answer the complaint of State *ex rel.* Hammond Elevator Co., *et al.*

And of this writ make due return.

Witness, Harold H. Wheeler, clerk of said court and the seal thereof hereunto affixed at Hammond, this 14th day of November, 1903.

HAROLD H. WHEELER, *Clerk.*

I hereby certify that the above is a true copy of the original summons.

CHAS. J. DOUGHERTY, *Sheriff.*
A. L. MORRIS, *Deputy,*

323 Copy.

Alternative Writ of Mandate.

In the Lake Superior Court, October Term, 1903.

STATE OF INDIANA, } ss:
County of Lake, }

THE STATE OF INDIANA on the Relation of HAMMOND ELEVATOR Company and Frank C. Williams, Secretary,
vs.
THE WESTERN UNION TELEGRAPH CO.

The State of Indiana to the Western Union Telegraph Company:

Whereas, Hammond Elevator Company and Frank C. Williams, secretary thereof, as relators in the above entitled cause have filed in said court their verified complaint in said action, alleging as follows:

STATE OF INDIANA, } ss:
Lake County, }

Lake Superior Court, October Term, 1903.

THE STATE OF INDIANA on the Relation of HAMMOND ELEVATOR Company, a Corporation, and Frank C. Williams, Secretary Thereof,
vs.
THE WESTERN UNION TELEGRAPH COMPANY, a Corporation.

Your petitioners respectfully petitioning the court for a writ of mandate against the defendant, say:

That the relator, Hammond Elevator Company, is, and for more than six months last past has been, a corporation duly organized and existing under and by virtue of the laws of the State of
324 Delaware; and that the relator, Frank C. Williams, is the qualified and acting secretary of the said Hammond Elevator Company, and appears herein as relator, not in his personal capacity, but as such secretary and for the said Hammond Elevator Company and not otherwise.

That said relator, Hammond Elevator Company, is organized among other things for the purpose of buying and selling grain and provisions, stocks and bonds, and other commodities and securities, and is now and has been heretofore since January 1st, 1903, engaged at Hammond, Indiana, in the business of buying and selling grain

and provisions, stocks and bonds and other commodities an securities.

That said defendant, The Western Union Telegraph Company i a corporation organized and existing under and by virtue of th laws of the State of New York, incorporated on to-wit: the 18th da of February, A. D. 1859, for the purpose of doing a general telegrapl business in, between and among the several States of the Unite States and elsewhere, and doing and authorized to do a general tele graph business in and between the States of Illinois and Indiana under and by virtue of the respective statutes of said last mentioned States, and authorized by its, said Western Union Telegraph Com pany's articles of incorporation and under the laws of Illinois an Indiana to exercise powers of eminent domain in connection wit and in aid of its said business and is a quasi-public corporatio engaged in a State and interstate business, public in its nature, an does now, and for more than one year last past has continuously operated a line of telegraph system to and through the said city o Hammond, in the State of Indiana. That it maintains and ha maintained during all of said times a public office in the city
325 of Hammond, where it receives and delivers messages and news generally to those who may desire and pay for the same That it does now and has during all of said time transmitted over the wires of its said system and through its said office at Hammond Indiana, the continuous quotations of the Chicago Board of Trade hereinafter mentioned.

That the Board of Trade of the City of Chicago, hereinafter called the "board," is a corporation organized under a special charter granted to said board by the State of Illinois on February 18, 1859, with its principal place of business in the city of Chicago, State of Illinois, and organized among other things, for the purpose of maintaining a commercial exchange and acquiring and disseminating commercial and economic information, and securing to said board's members privileges of co-operation in furtherance of the pursuits of said members and generally to do and carry on any business usually conducted by boards of trade or chambers of commerce; and that said board has conducted, since to-wit: February 18, 1859, and now is conducting and maintaining an exchange at the said city of Chicago, upon which exchange are bought and sold and contracted to be bought and sold all kinds of grain and hog products; and that the prices at which said commodities are so bought and sold or contracted to be bought and sold on said exchange are collected on said exchange and circulated in the manner hereinafter set forth, and when so collected and circulated are known as quotations, and when circulated at intervals of oftener than fifteen minutes are known as continuous quotations.

That said prices at which said commodities are so bought and sold or contracted to be sold are noted by persons placed for that purpose on said exchange, and by them marked down, and
326 that each and every fluctuation in the price of any of said commodities upon said exchange is immediately transmitted

to a telegraph operator on said exchange floor, who at once transmits the same, by telegram, to said Western Union Telegraph Company, at the offices of said Western Union Telegraph Company in the said city of Chicago, whence they are, by automatic apparatus rep-ated and sent out by said Western Union Telegraph Company over telegraph wires running to most of the large cities and other places in the United States and that said continuous quotations of said board are in the manner above stated continuously received and conveyed by said Western Union Telegraph Company by telegram at and from said city of Chicago at intervals of from a few seconds to three four or five minutes, according as fluctuations in said prices may occur, to persons, corporations and exchanges in the several States of the United States, within from fifteen to twenty seconds after such prices or fluctuations of prices are made in the course of such purchases and sales of commodities on said exchange of said board, and are thus supplied by said Western Union Telegraph Company to persons, corporations, and exchanges, as aforesaid, and to the public generally, upon the payment to said Western Union Telegraph Company of a regulation charge for the same.

That said prices at which said commodities are sold on said exchange as aforesaid, and the fluctuations thereof, as indicated by said continuous quotations, control the market price of said commodities through the middle West, including the States of Illinois and Indiana.

That it is essential to said Hammond Elevator Company in order to successfully transact and carry on the said business of said
327 Hammond Elevator Company at said Hammond to receive said continuous quotations at said Hammond, Indiana, and that on November 12, 1903, at the said city of Chicago, the said Hammond Elevator Company requested and demanded said continuous quotations at said Hammond, Indiana, from said Western Union Telegraph Company, and offered said Western Union Telegraph Company to pay said last mentioned company for the same the regular charge as above stated of said last mentioned company for said continuous quotations, and that said Western Union Telegraph Company then and there, on, to-wit: the day and year last aforesaid, at said city of Chicago, refused to furnish said Hammond Elevator Company with said continuous quotations as requested and demanded by said Hammond Elevator Company, as aforesaid, but without objection that said Hammond Elevator Company made no tender of such regular charge, and not on the ground of any failure on the part of said Hammond Elevator Company to make tender of such regular charge, and does wholly refuse so to do.

And your petitioners further show that said Hammond Elevator Company was on said last mentioned date and has been continuously hitherto willing and able to pay said Western Union Telegraph Company its regular charge on said last mentioned date, or from time to time, for said continuous quotations.

Your petitioners further show that said regular charge above

mentioned varies for different localities, being regular as to any given locality, but that your petitioners did not, on November 12 1903, and do not now know, what the specific regular charge of said Western Union Telegraph Company for said continuous quo
328 tations at Hammond, Indiana, was on said November 12 1903, or now is, but your petitioners show that said relator The Hammond Elevator Company, herewith and hereby offers to pay for said continuous quotations whatever the regular charge for same of said Western Union Telegraph Company is or would be for said continuous quotations at said Hammond, and to comply with any reasonable regulations on the part of said Western Union Telegraph Company in that connection.

Wherefore your petitioners pray the court that an alternative writ may issue, commanding the defendant, the said Western Union Telegraph Company to fix and accept from said Hammond Elevator Company the charge for said continuous quotations at Hammond Indiana, and to furnish said continuous quotations to said Hammond Elevator Company, at said Hammond, Indiana, or show cause why the same should not be done; and that upon final hearing a peremptory writ may issue, commanding said Western Union Telegraph Company to furnish said continuous quotations to said Hammond Elevator Company at said Hammond, Indiana.

CRUMPACKER & MORAN,
Attorneys for Petitioners.

STATE OF INDIANA, } ss:
County of Lake, }

Frank C. Williams, being first duly sworn, deposes and says that he is the relator of that name above named; that he has heard the foregoing petition read and knows the contents thereof; and that the same is true in substance and in fact as he verily believes; and that affiant is the secretary of said Hammond Elevator Company and is authorized as such to make this affidavit.

329 FRANK C. WILLIAMS.

Subscribed and sworn to before me, this 13th day of November 1903.

PETER CRUMPACKER,
Notary Public.

My commission expires, September 11, 1905.

and praying that an alternative writ of mandate be issued, commanding you to comply with the prayer of said complaint, as therein set forth, or show cause why the same should not be done,

Now, therefore, by order of the court in the premises, you are hereby commanded to comply with the prayer of said complaint as therein set forth, or in default thereof, that you appear before said court, at the court house in Hammond, in said county, on the 21st

day of December, 1903, at 9 o'clock, a. m., and then and there show cause, if any you have, why the same should not be done, and have you then and there this writ.

Witness, the clerk and seal of said court, hereunto affixed at Hammond, Indiana, this fourteenth day of November, 1903.

[SEAL.] HAROLD H. WHEELER,
Clerk Lake Superior Court.

(Endorsed:) Filed Dec., 15, 1903, Marshall E. Sampsell, clerk.

330 And on to wit: the 17th day of December in the July term of said court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

Order of December 17, 1903.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY ET AL. } 26837.

This cause coming on upon the motion of complainant for leave to file objections to the master's report *nunc pro tunc*, and come also the defendants and,

It is ordered, the complainant and defendants consenting, that it shall constitute no valid objections to the consideration of complainant's or defendants' exceptions to the report of William M. Booth, Esq., master in chancery, that similar objections thereto were not in due time filed before the said master.

331 And on to-wit: the 17th day of December, 1903, came the complainant in said entitled cause by its solicitor and filed in the clerk's office of said court its certain exceptions to the master's report in words and figures following to-wit:

332 *Exceptions to Master's Report.*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY ET AL.

Exceptions of complainant to the report of William M. Booth, Esq., master in chancery herein.

Now comes Board of Trade of the City of Chicago, complainant herein, and files the following exceptions to the report of William M. Booth, Esq., master in chancery herein. The report is erroneous:

I. In that the master finds (paragraph IV) that the order to buy or sell is transmitted by the correspondent in his own name as an offer *by the correspondent* to buy from or sell to the defendant, Hammond Elevator Company, when there is no evidence to warrant the finding.

II. In that the master did not find at the end of paragraph IV. that the amount of margins exacted by the correspondent of the customer is usually the same as that exacted by the Hammond Elevator Company in the daily statements rendered to it by the correspondent.

III. In that the master did not find in paragraph V. that until the return telegram accepting the trade is received, and the
333 customer notified, the customer does not have a trade, and until then the customer is in the position of one who has made an unaccepted offer.

IV. In that the master did not find that the relation of the correspondent to the customer is not that of principal, but that the principals in each trade are the customer and the Hammond Elevator Company.

V. In that the master finds that the Hammond Elevator Company has no way of identifying the customer and has no dealings with the customer, whereas he should have found that by the designation of each trade by a number, as in said report mentioned, the Hammond Elevator Company is always in a position to learn the identity of the customer (the other party to its trade) and the transactions of the defendant Hammond Elevator Company, are in reality with the customer and the transactions of the customer are in reality with the Hammond Elevator Company; and that the correspondent is merely an intermediary, and as such is the agent of said Hammond Elevator Company.

VI. In that the master finds (paragraphs V and VI) that as soon as the order is accepted a fixed margin is charged by the Hammond Elevator Company on its *books* against the correspondent.

VII. In that the master finds (paragraph VI) that the *correspondent* charges his customer a commission, and the Hammond Elevator Company charges the correspondent an *arbitrary* charge for the use of the private wire, whereas the master should have found that said Hammond Elevator Company charges upon each stock trade, and takes out of the margin charged upon each
334 such trade, a so-called commission of the amounts specified by the master, and remits to the correspondent $\frac{1}{8}$ of such commission (and in the few grain trades, all of it), as compensation for his services and expenses as said defendant's agent in getting and forwarding the business,—the said defendant Hammond Elevator Company retaining the remaining $\frac{1}{8}$ of said so-called commissions in stock trades.

VIII. In that the master did not find that the so-called commission was in no proper sense a commission, but was an arbitrary

profit taken by the Hammond Elevator Company (who is a principal) out of every trade it makes with a customer.

IX. In that the master did not find (paragraph VI) that the charge of fifty dollars a month charged by the Hammond Elevator Company against the correspondent was not for stock quotations and market gossip, but was in reality a means of retaining a further portion of the so-called commission.

X. In that the master finds in paragraph VII that the correspondent deposits an amount *approximating* the debit balance, whereas he should have found that the correspondent (Battle & Dickes) deposits the exact amount, except where it is small, when it is added to or deducted from the balance on the next day's statement.

XI. In that the master finds the facts recited in paragraph IX. when there is no evidence to warrant this, and he fails to find that in reality the said Hammond Elevator Company requires each of its agents (correspondents) to have each of his customers keep his margins always up to the market, and in default in doing this, requires the correspondent to pay the margins himself,—in
335 other words, the correspondent guarantees to the said Hammond Elevator Company all trades sent from and through his office; that is, adequate margins upon all such trades.

XII. In that the master finds that as between the correspondent and the Hammond Elevator Company each $10. margins the trade in 1,000 bushels of grain a full cent, and a stock trade one dollar per share, whereas the evidence shows that the point to which the margin carries the trade is, as respects, and by, the said Hammond Elevator Company, determined by deducting the so-called commission from the margin charges, and that in effect the defendant collects the entire commission from the customer through the statements aforesaid.

XIII. In that the master did not find that through these daily statements and the charging of margins (and when the exhaust point is reached, further margins) against each trade, the correspondent is the instrument by which the Hammond Elevator Company collects from the other party to the trade (the customer) the margins which said Hammond Elevator Company exacts as a deposit upon the trade.

XIV. In that the master fails to find from the evidence that the said Hammond Elevator Company closes the trade at a point which enables it to collect the full so-called commission.

XV. In that the master finds (paragraph XI) contrary to the evidence, that the 50 cents is charged for each 10 shares *traded in* that day, whereas this charge is never made until a trade is closed.

XVI. In that the master does not find that the correspondent is a *del credere* agent of the Hammond Elevator Company.

336 XVII. In that the master does not find that the correspondent is the instrument (agent) by which said Hammond Elevator Company pays to the customer his profit upon the transac-

tion, or collects from the customer the Hammond Elevator Company's profit (the customer's loss) therein.

XVIII. In that the master finds (paragraph XII) that the Hammond Elevator Company *upon the order of the correspondent* closes the trades at a point that will leave the so-called commissions in the hands of the Hammond Elevator Company, when there is no evidence to warrant such a finding.

XIX. In that the master did not find the facts recited in paragraph XIV., confining the statements therein as to a division of the so-called commissions to stock trades.

XX. In that the master finds that the trades (contracts) are made at Hammond, Ind., whereas he should have found that they are made in Illinois.

XXI. In that the master finds that the correspondent bears the relation of agent to the customer.

XXII. In that the master finds (paragraph XV) without evidence that the customer does not direct the correspondent to trade with the Hammond Elevator Company, and the correspondent is at liberty to place the customer's trades elsewhere than with the said Hammond Elevator Company.

XXIII. There is no evidence that the correspondent trades with the Hammond Elevator Company on his own account, or that the Hammond Elevator Company has any reason to suppose that he does.

337 XXIV. In that the master does not find that the so-called wire service does not vary with the length of wire used or increase with the increase of the distance of the correspondent's place of business from Hammond, Indiana.

XXV. In that the master finds (paragraph XVII) that the correspondent has no authority to bind the Hammond Elevator Company, and that in depositing the debit balances he is not acting as the Hammond Elevator Company's agent.

XXVI. In that the master finds that at the date of the service the Hammond Elevator Company was not transacting business in Illinois.

XXVII. In that the master finds that neither Babb, Battles, nor Dickes, was, when served, the agent of the Hammond Elevator Company upon whom service could be legally made.

XXVIII. In that the master recommends that the motion to quash service of process be sustained.

BOARD OF TRADE OF CITY OF CHICAGO,
By HENRY S. ROBBINS, *Its Solicitor.*

(Endorsed): Filed Dec. 17, 1903. Marshall E. Sampsell, clerk.

[Endorsed:] 26837. United States circuit court. Board of Trade of the City of Chicago *vs.* Hammond Elevator Company. Copy of exceptions to the master's report. Filed, Dec. 17, 1903.

338 And on to-wit: the 18th day of December, 1903, there issued out of the clerk's office of said court a certain chancery subpœna against the Western Union Telegraph Company, directed to the marshal of said district to execute, which said subpœna together with the memorandum thereto attached and the marshal's return thereon endorsed is in the words and figures following to-wit:

339 Form No. 186.

UNITED STATES OF AMERICA, *Northern District of Illinois, Northern Division,* } ss:

The United States of America to Western Union Telegraph Company, Greeting:

We command you, that you appear before our judges of our circuit court of the United States of America, for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of February, next, to answer the bill of complaint, amendment to bill of complaint and supplemental bill of complaint of Board of Trade of the City of Chicago, filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this 18th day of December in the year of our Lord one thousand nine hundred and three, and of our Independence the 128th year.

[SEAL.] MARSHALL E. SAMPSELL, *Clerk.*

Memorandum.

The above named defendant is notified that unless it shall enter its appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against it as confessed, and a decree entered accordingly.

MARSHALL E. SAMPSELL, *Clerk.*

340 Circuit Court of the United States of America, Northern District of Illinois, ss:

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY ET AL. } In Chancery.

To Western Union Telegraph Company:

Take notice that the complainant will move this honorable court, on the 21st day of December A. D. 1903 or as soon thereafter as counsel can be heard that a writ of preliminary injunction issue against the within and above named defendant in accordance with the prayer of the bill herein.

Yours, etc., HENRY S. ROBBINS,
Comp't's Solicitor.

Dated this eighteenth day of December, A. D. 1903.

Marshal's Return.

I have served this writ within my district as follows:
Upon Western Union Telegraph Company by delivering a true copy thereof to T. P. Cook, general superintendent of said Co. on December 18, 1903. I was unable to find the president of said Co. in my district.

JOHN C. AMES,
U. S. Marshal,
By ASAD UDELL, *Deputy.*

(Endorsed:) Filed Dec., 29, 1903, Marshall E. Sampsell, clerk.

341 And on to-wit: the 21st day of December, being one of the days of the regular December term of said court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

Order of December 21, 1903: *Leave to Amend Return of Marshal.*

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY. } 26837.

It appearing to the court that on the 8th day of July, A. D. 1903, the United States marshal served the defendant company by making service upon Battle and Dickes, agents of the said company and that

in making the return, by a clerical error, the year "1902" was inserted in the return instead of "1903," and the court being fully advised in the premises, it is hereby ordered that the marshal have leave to amend the said return in accordance with the facts.

342 And on the same day to-wit: the 21st day of December, being one of the days of the December term of said court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

Order of December 21, 1903, *Dismissing Bill as to Hammond Elevator Company.*

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY ET AL. } 26837.

This cause coming on upon the exceptions of complainant to the report of William M. Booth, Esq., master herein, and the court having heard the arguments of counsel, and being fully advised,

It is ordered that all of complainant's said exceptions to said master's report be, and the same are hereby overruled, and the master's report is in all respects approved and confirmed, and the motion of defendant, Hammond Elevator Company to quash the service of subpœnas upon it is granted.

And counsel for complainant stating in open court that complainant is unable to make any other or different service upon the defendant, Hammond Elevator Company within this district,

It is ordered, adjudged and decreed that the amended and supplemental bills herein be, and the same are hereby dismissed as to the defendant Hammond Elevator Company for want of prosecution, at the cost of the complainant.

343 And on to-wit: the 23rd day of February, 1904, being one of the days of the regular December term of said court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

Decree of February 23 Dismissing Bills as to Western Union Telegraph Company.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY and WESTERN UNION TELEGRAPH Company. } 26837.

This cause coming on for hearing upon the motion of the complainant for a decree *pro confesso* against the defendant Western Union Telegraph Company, and it appearing to the court that it has not acquired and cannot acquire jurisdiction of the person of the defendant Hammond Elevator Company, and that by order previously entered herein, the amended and supplemental bills herein have been dismissed as to the said defendant Hammond Elevator Company, and that it is not practicable to proceed herein without the presence of said Hammond Elevator Company, and the court being fully advised in the premises,

It is ordered, adjudged and decreed that the amended and supplemental bills herein be, and the same are hereby, dismissed as to the defendant Western Union Telegraph Company at complainant's cost, without prejudice to complainant's right to institute such other suits as it may deem advisable, touching the matters in said bills contained.

344 And on to-wit: the 26th day of February, 1904, came the complainant in said entitled cause by its solicitor and filed in the clerk's office of said court, its certain petition for appeal in wordt and figures following to-wit:

Petition for Appeal.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY and WESTERN UNION TELEGRAPH Company.

The above named complainant, conceiving itself to be aggrieved by the decision of this court that it was without jurisdiction of the person of the defendant Hammond Elevator Company, and by the

orders and decrees entered by this court in pursuance of such decision on the 21st day of December 1903 and the 23rd day of February, 1904, does hereby appeal from said final decree of February 23rd, 1904, to the Supreme Court of the United States upon the said question of jurisdiction for the reasons specified in the assignments of errors this day filed herein; and it prays that this appeal may be allowed, that said question may be certified to the Supreme Court, and that a transcript of the record, and all proceedings herein be forthwith transmitted to said Supreme Court of the United States.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HENRY S. ROBBINS, *Its Solicitor.*

(Endorsed:) Filed Feb. 26, 1904, Marshall E. Sampsell, clerk.
[Endorsed:] Petition for appeal.

345 And on the same day to-wit: the 26th day of February, 1904, came the complainant in said entitled cause by its solicitor and filed in the clerk's office of said court its certain assignment of errors, in words and figures following to-wit:

Assignment of Errors.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY ET AL.

Now comes the complainant and files the following assignment of errors, upon which it relies for grounds of reversal on appeal in the above entitled cause:

1. That the court erred in granting the defendant Hammond Elevator Company's motion to quash service of subpœna herein:

2. That the court erred in adjudging the service of subpœnaes herein insufficient to confer jurisdiction of the Hammond Elevator Company, and in entering the order of December 21st, 1903, dismissing, for this reason, the suit as to the defendant Hammond Elevator Company:

3. That the court erred in sustaining the report of the master herein:

4. That the court erred in not overruling the master's report and in not proceeding to dispose of the case upon the merits, as against the defendant Hammond Elevator Company.

5. That the court erred in overruling complainant's exceptions to the master's report, and each of them.

That the court erred:

6. In not sustaining complainant's 1st exception to the master's report:

7. In not sustaining complainant's 2nd exception to the master's report.

346 8. In not sustaining complainant's 3rd exception to the master's report.

9. In not sustaining complainant's 4th exception to the master's report.

10. In not sustaining complainant's 5th exception to the master's report.

11. In not sustaining complainant's 7th exception to the master's report.

12. In not sustaining complainant's 8th exception to the master's report.

13. In not sustaining complainant's 9th exception to the master's report.

14. In not sustaining complainant's 10th exception to the master's report.

15. In not sustaining complainant's 11th exception to the master's report.

16. In not sustaining complainant's 12th exception to the master's report.

17. In not sustaining complainant's 13th exception to the master's report.

18. In not sustaining complainant's 14th exception to the master's report.

19. In not sustaining complainant's 15th exception to the master's report.

20. In not sustaining complainant's 16th exception to the master's report.

21. In not sustaining complainant's 17th exception to the master's report.

22. In not sustaining complainant's 18th exception to the master's report.

347 23. In not sustaining complainant's 19th exception to the master's report.

24. In not sustaining complainant's 20th exception to the master's report.

25. In not sustaining complainant's 21st exception to the master's report.

26. In not sustaining complainant's 22nd exception to the master's report.

27. In not sustaining complainant's 23rd exception to the master's report.

28th. In not sustaining complainant's 24th exception to the master's report.

29. In not sustaining complainant's 25th exception to the master's report.

30. In not sustaining complainant's 26th exception to the master's report.
31. In not sustaining complainant's 27th exception to the master's report.
32. In not sustaining complainant's 28th exception to the master's report.
33. In not holding that it had jurisdiction of defendant, Hammond Elevator Company.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HENRY S. ROBBINS, *Its Solicitor.*

(Endorsed:) Filed Feb., 26, 1904, Marshall E. Sampsell, clerk.
[Endorsed:] Assignment of errors.

348 And on to-wit: the 26th day of February, 1904, there was filed in the clerk's office of said court in said entitled cause a certain certificate of jurisdictional questions in words and figures following to-wit:

Certificate.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY ET AL.

An order or decree having been entered herein on the 21st day of December, 1903, dismissing said suit as to the Hammond Elevator Company, and a final decree having been entered herein on the 23rd day of February, 1904, dismissing said suit as to the other defendant, Western Union Telegraph Company:

Now, therefore, this court, in pursaunce of the second paragraph of the fifth section of the act of Congress, approved March 3rd, 1891, and entitled: An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," hereby certifies to the Supreme Court of the United States, that in the above entitled cause the jurisdiction of this court of the person of the defendant Hammond Elevator Company was in issue, and was decided adversely to the complainant, and that by reason thereof, and not otherwise, the order or decree of December 21st, 1903, and the final decree of February 23rd 1904, shown in the record herein, were entered: and that pursuant to said act above mentioned, the following questions are hereby certified to the Supreme Court:

349 I. Whether, by the service of subpœna, as shown by the record herein, upon either A. H. Babb, John L. Dickes, or Charles S. Battle, as agent of the defendant Hammond Elevator Company, this court acquired jurisdiction of the person of the defendant Hammond Elevator Company.

II. Whether, under the facts shown by the evidence taken on that issue, the defendant Hammond Elevator Company, was, at the time of the service of subpœna herein, either on said A. H. Babb, Charles S. Battle, or John L. Dickes, within the northern district of Illinois, so as to be brought within the jurisdiction of this court in this case by service of said process upon either said Babb, said Battle or said Dickes.

III. Whether the service of a subpœna upon either said Babb, said Battle, or said Dickes, as shown herein, was, under the evidence herein, a legal service of process herein upon the defendant Hammond Elevator Company, so as to vest in this court jurisdiction herein of the person of the defendant Hammond Elevator Company.

IV. Whether, at the time of the service of subpœna herein upon him, either A. H. Babb or John L. Dickes, or Charles S. Battle, was, under the evidence, the agent of the defendant Hammond Elevator Company in the sense, or to the extent, that service upon him was a legal service of subpœna herein upon the Hammond Elevator Company.

KOHLSAAT, *Judge.*

(Endorsed:) Filed Feb., 26, 1904. Marshall E. Sampsell, clerk.

350 And on to-wit: the 26th day of February, 1904, being one of the days of the regular December term of said court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

Order of February 26, 1904, *Allowing Appeal.*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

BOARD OF TRADE OF THE CITY OF CHICAGO
vs.
HAMMOND ELEVATOR COMPANY ET AL.

Now comes the complainant, by its solicitor, and it appearing to the court that the petition for appeal and assignments of error have been filed herein,

It is ordered that an appeal to the Supreme Court of the United States, from the final decree entered herein on the 23rd day of Feb-

ruary, 1904, be, and the same is, allowed upon the question of the jurisdiction of this court over the person of the defendant Hammond Elevator Company, as prayed: and that for the purpose of enabling the Supreme Court to decide this question, a transcript of the record herein be forthwith transmitted to the Supreme Court, and that the complainant file its appeal bond in the sum of five hundred dollars ($500.00) with the City Trust Safe Deposit & Surety Company of Philadelphia, as surety.

— —.

351 And on the same day to-wit: the 26th day of February, 1904, there was filed in the clerk's office of said court in said entitled cause a certain bond on appeal in words and figures following to-wit:

Bond on Appeal.

Know all men by these presents, that we, Board of Trade of the City of Chicago, a corporation, as principal, and the City Trust Safe Deposit and Surety Company of Philadelphia, a corporation, as surety, are held and firmly bound unto Hammond Elevator Company and Western Union Telegraph Company, in the full and just sum of five hundred dollars ($500.00) to be paid to the said Hammond Elevator Company and Western Union Telegraph Company, their assigns or successors, for which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals, and dated this 25th day of February, A. D. 1904.

Whereas, lately, at the December term of the circuit court of the United States for the northern district of Illinois, in a suit pending in said court between the said Board of Trade of the City of Chicago as complainant, and the said Hammond Elevator Company and Western Union Telegraph Company, as defendants, a decree was rendered dismissing said suit as to the said Hammond Elevator Company, at complainant's costs; and subsequently, at said December term of said court, a decree was rendered dismissing said suit as to said Western Union Telegraph Company, at complainant's costs, and said Board of Trade of the City of Chicago has obtained an order of appeal of the said court to reverse the decrees in the aforesaid suit, and a citation directed to the said Hammond Elevator Company and Western Union Telegraph Company, citing and admonishing them to be and appear in the Supreme Court of the United States thirty (30) days from and after the date of said citation:

352 Now, the conditions of the above obligation are such, that if the said Board of Trade of the City of Chicago shall duly prosecute its said appeal with effect, and answer all damages and

costs if it fails to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] BOARD OF TRADE OF THE CITY OF CHICAGO.
By WM. S. JACKSON, *President.*

Attest: GEO. F. STONE, *Secretary.*

THE CITY TRUST, SAFE DEPOSIT AND SURETY COMPANY OF PHILADELPHIA, [SEAL.]
By JOSEPH T. BOWEN,
Resident Vice President.

Attest: LOUIS L. DENT,
Resident Assistant Secretary.

App'd Feb. 26, 1904.
KOHLSAAT, *J.*

(Endorsed:) Filed Feb. 26, 1904. Marshall E. Sampsell, clerk.
[Endorsed:] Appeal bond.

353 *Præcipe for Record.*

Circuit Court of the United States, Northern District of Illinois, Northern Division.

BOARD OF TRADE OF THE CITY OF CHICAGO *vs.* HAMMOND ELEVATOR COMPANY ET AL. } In Chancery. 26837.

To the clerk of the above entitled court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the Supreme Court of the United States, under the appeal heretofore perfected to said court, and include in the said transcript the following pleadings, proceedings and papers on file, to-wit:

Bill for injunction filed July 8, 1903.
Chancery subpœna and marshal's return thereon endorsed.
Bond for costs, filed July 10, 1903.
Special appearance and motion filed Aug. 3, 1903.
Affidavit of Frank C. Williams and Wm. H. Gostlin filed Aug. 3, 1903.
Order of August 3, 1903.
Order of October 5, 1903.
Evidence taken before Master in Chancery Wm. M. Booth, filed Sep. 15, 1903.

354 Master's report filed Sept. 15, 1903.
Order of December 15, 1903, leave to amend bill and to file supplemental bill.
Amendments to bill, filed Dec. 15, 1903.
Supplemental bill filed December 15, 1903.
Order of Dec. 17, 1903.
Complainant's exceptions to master's report, filed Dec. 17, 1903.
Chancery subpœna issued Dec. 18, 1903.
Order of Dec. 21, 1903, leave to amend return of marshal.
Decree of Dec. 21, 1903, dismissing bill as to Hammond Elevator Co., etc.
Decree entered February 23, 1904.
Petition for appeal filed February 26, 1904.
Assignments of errors, filed February 26, 1904.
Certificate of jurisdictional question filed February 26, 1904.
Order of February 26, 1904, allowing appeal.
Appeal bond filed February 26, 1904.
Said transcript to be prepared as required by law and the rules of this court and the rules of the Supreme Court of the United States and on file in the office of the clerk of the said Supreme Court of the United States before March 26, 1904.

HENRY S. ROBBINS,
Solicitor for Appellant.

(Endorsed:) Filed February 26, 1904, Marshall E. Sampsell, clerk.

355 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, Marshall E. Sampsell, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court and made in accordance with præcipe filed in the cause entitled Board of Trade of the City of Chicago *vs.* Hammond Elevator Company and Western Union Telegraph Company, general number 26,837, as the same appear from the original records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district, this 2nd day of March, 1904.

MARSHALL E. SAMPSELL, *Clerk.*

356 UNITED STATES OF AMERICA, ss:

To Hammond Elevator Company and Western Union Telegraph Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an appeal order entered in the clerk's office of the circuit court of the United States for the northern district of Illinois wherein Board of Trade of the City of Chicago is complainant and you are defendants, to show cause, if any there be, why the decree rendered against the said complainant as in the said decree mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat, judge this 26th day of February, in the year of our Lord one thousand nine hundred and four (1904)

KOHLSAAT, *Judge.*

357 [Endorsed:] No. 26837. Supreme Court of the United States Board of Trade vs. Hammond Elev. Co. Citation to the Supreme Court of the United States. Circuit court of the United States, northern district of Illinois, northern division. Filed Feb. 29 1904 Marshall E. Sampsell, clerk.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, County of Cook, }

Earl C. Hales being first duly sworn, deposes and says that he served the within citation upon the within named Hammond Elevator Company, by delivering a true copy thereof to John A. Brown, a member of the firm of Kern & Brown, solicitors for said Hammond Elevator Company, this 29th day of February, A. D. 1904.

EARL C. HALES.

Subscribed and sworn to before me this 29th day of February, A. D. 1904.

[Seal of Martin Howard Foss, Notary Public, Chicago, Ill.]

MARTIN HOWARD FOSS,
Notary Public.

Service of the within citation accepted this 29th day of February A. D. 1904.

PERCY B. ECKHART,
Solicitor for Western Union Telegraph Company.

Endorsed on cover: File No. 19,281. N. Illinois C. C. U. S. Term No. 215. Board of Trade of the City of Chicago, appellant, vs. Hammond Elevator Company and Western Union Telegraph Company. Filed March 24th, 1904. File No. 19,281.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 215.

BOARD OF TRADE OF THE CITY OF CHICAGO, *Appellant,* vs. HAMMOND ELEVATOR COMPANY AND WESTERN UNION TELEGRAPH COMPANY, *Appellees.*	Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

STATEMENT.

This is an appeal directly to this court from a decree of the Circuit Court dismissing the suit for want of jurisdiction of the appellee Hammond Elevator Company.

The bill was originally filed by appellant against that company alone. It alleged that appellant has a property right in the quotations of prices in transactions made within its exchange hall, that the Hammond Company had entered into a conspiracy with others to steal, and was using such, quotations, and prayed that it be enjoined from doing so.

The return of the subpoena shows service upon the Hammond Company by the delivery of copies thereof to one Babb, and to each of the firm of Battle & Dickes, as its agents. (Rec., 20.)

Thereupon the Hammond Company, appearing specially for that purpose, moved to set aside the service on the ground that it was a Delaware corporation and at no time since the filing of the bill was it doing business or had it any agents within the district or the State of Illinois, nor was it a resident thereof. (Rec., 22.)

The master, to whom this motion was referred to take the evidence and report the same with his conclusions, made a lengthy report (Rec., 217-227), in which he found that the Hammond Company was not, at the time of the service of process, doing business in Illinois, so as to subject it to service of process there, and that neither Babb, Battle nor Dickes was such agent of defendant that the service of process was sufficient, and recommended that the motion to quash service be sustained. To this report appellant filed sundry exceptions. (Rec., 237-240.)

Appellant also amended its bill, so as to make the Western Union Telegraph Company a co-defendant (Rec., 228), and filed a supplemental bill (Rec., 230) averring that, since the original bill, the Hammond Company had instituted in a state court in Indiana an action of *mandamus* against the Western Union Telegraph Company to compel it to furnish that company with these quotations in violation of appellant's contract with such telegraph company providing for a restricted distribution of such quotations. The

amended bill also prayed that the Hammond Company be enjoined from obtaining, or enforcing, or receiving the quotations under, and the Telegraph Company from complying with, any judgment rendered in that cause.

The Circuit Court overruled all of the exceptions, confirmed the master's report, granted the motion to quash, and—counsel for appellant admitting that it was unable to make any other or different service on the Hammond Company—dismissed the bill as to that company.

Subsequently at the same term the court entered a final decree which, after reciting that, "it appearing to the court that it has not acquired and cannot acquire jurisdiction of the person of the defendant Hammond Elevator Company, * * * and that it is not practicable to proceed herein without the presence of" that company, directed that said suit be dismissed also as to the Western Union Telegraph Company at complainant's costs, without prejudice, etc. (Rec., 244.)

Thereupon appellant presented its petition for appeal to this court "upon the said question of jurisdiction for the reasons specified in the assignments of errors," and praying that the appeal be allowed and said question certified to this court. Assignments of error, contemporaneously filed, relate exclusively to the question of jurisdiction. (Rec., 244-6.)

The Circuit Court allowed this appeal "upon the question of the jurisdiction of this court over the person of the defendant Hammond Elevator Company, as prayed," etc. (Rec., 248.)

At the same time the trial judge signed and filed a

certificate, reciting that in pursuance to the 5th section of the Act of March 3, 1891, he certified "that in the above entitled cause the jurisdiction of this court of the person of the defendant Hammond Elevator Company was in issue, and was decided adversely to the complainant, and that by reason thereof, and not otherwise," the order dismissing the suit as to the Hammond Elevator Company and the final decree were entered. (Rec., 247.)

This certificate also contains the following questions:

"I. Whether, by the service of subpoena, as shown by the record herein, upon either A. H. Babb, John L. Dickes, or Charles S. Battle, as agent of the defendant Hammond Elevator Company, this court acquired jurisdiction of the person of the defendant Hammond Elevator Company.

II. Whether, under the facts shown by the evidence taken on that issue, the defendant Hammond Elevator Company, was, at the time of the service of subpoena herein, either on said A. H. Babb, Charles S. Battle, or John L. Dickes, within the northern district of Illinois, so as to be brought within the jurisdiction of this court in this case by service of said process upon either said Babb, said Battle or said Dickes.

III. Whether the service of a subpoena upon either said Babb, said Battle, or said Dickes, as shown herein, was, under the evidence herein, a legal service of process herein upon the defendant Hammond Elevator Company, so as to vest in this court jurisdiction herein of the person of the defendant Hammond Elevator Company.

IV. Whether, at the time of the service of subpoena herein upon him, either A. H. Babb, or John L. Dickes, or Charles S. Battle, was, under the evidence, the agent of the defendant Hammond Elevator Company in the sense, or to the extent, that service upon him was a legal service of subpoena herein upon the Hammond Elevator Company."

I.

THIS RECORD PRESENTS A QUESTION OF JURISDICTION WITHIN SECTION 5 OF THE ACT OF 1891.

That section provides that appeals shall lie directly to this court "in any case in which the jurisdiction of the court was in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision."

"Jurisdiction" is a word of different meanings. In one sense a court of chancery has no jurisdiction, where there is a remedy at law; but, as under the federal judicial system the *same* court has jurisdiction of equity and common law cases, this objection really is, not that the court, as such, has no jurisdiction at all, but that the suit is on the wrong side of the court. So a court is said to be without jurisdiction, where another court has previously taken jurisdiction.

But in these cases the court is required to decide whether, in the one case, the remedy at law is adequate, and in the other, which court did first get jurisdiction, and its decision binds the parties.

In these and like cases no question of jurisdiction is involved within the meaning of section 5.

Smith v. *McKay*, 161 U. S., 355.
Blythe v. *Hinckley*, 173 U. S., 501.
Ill. Cen. R. R. Co. v. *Adams*, 180 U. S., 28.
Bache v. *Hunt*, 193 U. S., 523.
Louisville Trust Co. v. *Knott*, 191 U. S., 225.

In a more restricted sense, jurisdiction

means *the power to decide.* Without this any judgment is subject to direct or collateral attack as an absolute nullity. Jurisdiction of this kind is two-fold: (1) of the subject-matter, and (2) of the person. If either is wanting, there is no jurisdiction.

It is in this sense that "jurisdiction" is used in section 5.

O'Neal v. *United States,* 190 U. S., 36.

Thus confining "jurisdiction"—this court by section 5 is required to review upon direct appeal or writ of error, "*any* case in which the jurisdiction of the court is in issue." This is but a re-assertion of the policy of the Act of February 25, 1889, which provided for writs of error and appeals to this court, upon the question of jurisdiction without reference to the amount involved.

The reason for these enactments doubtless was the importance of the question of jurisdiction, and the serious consequences that might arise, should the Circuit and District Courts, from a mistaken view of their power, enter, and act under, judgments that were in fact nullities.

Hence, this court has uniformly upheld its jurisdiction to review, upon direct appeal or writ of error under section 5, *any* question of jurisdiction—whether of the subject-matter;

Wetmore v. *Rymer,* 169 U. S., 115.
Huntington v. *Laidley,* 176 U. S., 668.
Interior Construction Co. v. *Gibney,* 160 U. S., 217.

or of the person of the defendent.

Shepard v. *Adams*, 168 U. S., 618.
Societe Fonciere v. *Milliken*, 135 U. S., 304.
Coniey v. *Mathieson Alkali Works*, 190 U. S., 406.
Goldey v. *Morning News*, 156 U. S., 518.

Conversely the Circuit Courts of Appeals decline to entertain such cases.

St. Louis Compress Co. v. *American Co.*, 125 Fed., 196; 60 C. C. A., 80.

Some little uncertainty seems to have arisen at first from the phrase of that section "in such cases the question of jurisdiction alone shall be certified."

The Act of April 29, 1802, provided (Ch. 31, Sec. 6):

"That whenever *any question* shall occur before a circuit court, upon which the opinions of the judges shall be opposed, the *point* upon which the disagreement shall happen, shall, during the same term, upon the request of either party, or their counsel, *be stated* under the direction of the judges, and certified under the seal of the court, to the supreme court, at their next session to be held thereafter; and shall, by the said court, be finally decided."

This language was subsequently re-enacted into section 652 of the Rev. Stat., Act of June 1, 1872.

The peculiar wording of these provisions required the question certified upon a disagreement of the judges to be a single and specific question of law, and not questions of fact, and the certificate was required to state the facts or parts of the record necessary to properly present that question. (*California Paving Co.* v. *Molitor*, 113 U. S., 609.) The certificate was the only record in this court and was required to be

complete in itself, subject to the rights of this court to order up the record itself.

At first the expressions of this court seemed to indicate that Section 5 of the Act of 1891 contemplated this kind of a certificate. (*Maynard* v. *Hecht*, 151 U. S., 324.)

But later a difference was noted between requiring a certificate, which should state the question to be decided and all of the case that was necessary to decide it, and one whose only purpose was to establish a fact, upon which this court's jurisdiction depended.

That Congress by section 5, contemplated only a certificate of the second kind is apparent from the requirement that "*any* case in which the jurisdiction of the court is in issue," should be reviewable by this court. If a certificate of the character required under the old law were insisted upon, *all* such cases would not be reviewable here, because under that kind of a certificate questions of jurisdiction involving a question of fact, or a mixed question of law and fact, could not be certified.

Note here also that section 6 authorizes a Circuit Court of Appeals to certify to this court "any questions or propositions *of law*" upon which it desires instruction. Rule 37 of this court covers only certificates under section 6, and provides that they "shall contain a proper statement of the facts on which such question or proposition of law arises," thus making them substantially like certificates under the old law, and also recognizing a distinction between such certificates and those under section 5.

Undoubtedly Congress, in requiring by section 5

the question of jurisdiction to be certified, realized that in some cases—where, for instance, a want of jurisdiction and a defense to the merits were simultaneously pleaded and there was a general judgment for defendant—it would, without some kind of a certificate, be difficult to determine when the question of jurisdiction had really been the controlling issue. To meet this difficulty the Act of 1891 exacts from the trial judge a certificate *of the fact* that the case had turned on the question of jurisdiction.

Hence, this court, under section 5, has not only reviewed jurisdictional cases involving questions of fact, and of mixed law and fact,

Wetmore v. *Rymer*, 169 U. S., 115.
Conley v. *Mathieson Alkali Works*, 190 U. S., 406.
Geer v. *Same*, *id.*, 428.

but has also held that there need not in some cases be any certificate at all; but that the question may appear either "by the terms of the decree appealed from and of the order allowing the appeal, or by a separate certificate of the court below"; and that, where the judgment was for defendant upon a preliminary defense of a want of jurisdiction,—the question of jurisdiction being thus the only one involved,—and the appeal is allowed upon this question alone, no certificate is necessary.

United States v. *Jahn*, 155 U. S., 109.
In re Lehigh Min. & Mfg. Co., 156 U. S., 322.
Shields v. *Coleman*, 157 U. S., 168.
Interior Construction Co. v. *Gibney*, 160 U. S., 217.

Smith v. *McKay*, 161 U. S., 355.
Huntington v. *Laidley*, 176 U. S., 668.
Excelsior Co. v. *Pacific Co.*, 185 U. S., 282.
Arkansas v. *Schlierholz*, 179 U. S., 598.
Courtney v. *Pradt*, 25 Sup. Court Rep., 208 (decided January 3, 1905.)

This record, as already shown, more than meets the requirements of these cases, as respects the certification of the question of jurisdiction.

II.

THE SERVICE OF PROCESS SHOWN BY THE RECORD WAS ADEQUATE.

First. It is here essential to refer to *the facts* somewhat in detail, in order to understand the character of the business of the Hammond Company and the relation to it of the persons served.

It is a Delaware corporation, engaged in the business of making "trades" in stocks and grain, and in order to gather business from persons living in Illinois (Rec., 223) it has adopted the following plan: It leases from appellee telegraph company wires running from the Hammond Company's office at Hammond, Indiana, to certain offices in ten or twelve different cities in Illinois, including Peoria and Aurora. (Rec., 38, 218.) Each of these leases gives the Hammond Company the exclusive use of the leased wire during business hours (Rec., 218), and states as the termini of such wire the office of the lessee company at Hammond and *its* office in the Illinois city.

(Rec., 218.) Each lease calls for a fixed rental, which is paid by the *Hammond Company.* (Rec., 218.)

The Hammond Company also enters into an arrangement with a person located in the Illinois city (called its "correspondent"), which contemplates an office in that city in charge of such person, and the transmission by the Hammond Company to him, over this leased wire, during the market hours of the New York Stock Exchange each day of the continuous market quotations of that exchange, covering about 60 different stocks, which quotations are posted upon a blackboard in this office as soon as received. (Rec., 115, 116, 219.) Appellant's quotations are also sent over this wire (Rec., 38), but are not posted.

When by the display of these quotations and otherwise persons resorting to these offices are stimulated to make "trades," the correspondent receives the orders, numbers them consecutively, and transmits them in a message over this wire to Hammond for the company's acceptance. (Rec., 223.) Sometimes the price is mentioned by the customer, and sometimes it is not. In the latter case it is understood that the trade is proposed to be made at whatever the market then is. (Rec., 219.)

Upon receipt of the telegram in Hammond a clerk of this company looks at a book, in which these quotations are also written, "to find out what the market is," and he usually "fills" the order by marking that price upon the telegram, and this is reported back over the wire to the correspondent. (Rec., 41.) Upon the receipt of this return message the telegraph operator in the Illinois office, from a

clock there, marks upon the telegram the then exact time of day "as the time when the order was filled". (Rec., 120, 121.) The correspondent then notifies the trader of the acceptance of the trade. (Rec., 219.) Until the return message is received, the transaction is not entered upon the correspondent's book (Rec., 122, 123); nor until then is the order considered by the correspondent as a trade. (Rec., 84.) The correspondent, upon the receipt of this return message, gives the trader a memorandum showing the trade and the price to which his margin carries it. (Rec., 68.)

When the trader desires to close a trade thus opened, the correspondent in like manner receives and transmits over this wire to the Hammond Company at Hammond, the trader's order to "close" the trade, giving in this telegram the number already given to the trade. This order is "filled" at Hammond in the same way as the opening order. (Rec., 42.)

Each trade is received, numbered, transmitted and closed separately. No two trades are combined. On the books of the Hammond Company and the correspondents, and in all telegrams passing between them, each trade is treated as a separate one, and is, and always can be, identified by the number given to it at the start. (Rec., 219.) The name of the trader is not furnished to, nor entered upon the accounts of, the Hammond Company; but the master is inaccurate in saying that the company "has no way of identifying him." In the traders ledger account upon the correspondent's books his trades are entered by their numbers. (Rec., 123, 124.) Thus the company can identify

the other party in each of its trades and every trader can, by the number, trace and identify each of his trades in the books of the Hammond Company.

Each of these initial orders is in terms to "buy" or "sell" one of the numerous stocks, whose prices are quoted in these quotations, except the few that relate to grain. (Rec., 82.) This is also true of the orders to close trades. If the original order is to "buy" stocks, the closing order is to "sell" the same quantity of the same stock, the telegram adding "to close number ....," giving the number given at the outset of the trade. (Rec., 42, 43.)

The profit or loss on each transaction to the trader is the difference between the buying price and the selling price, minus or plus the "commission" hereinafter mentioned. (Rec., 138.) Except as modified by the deduction of the commission, the profit of the trader measures the loss of the Hammond Company, and *vice versa*. The correspondent does not get any of this profit, nor, except under the guaranty hereinafter stated, incur any of this loss. (Rec., 223.) The trade is not considered closed, nor is the trader paid any profit, until the correspondent is notified from Hammond that the closing order is accepted. (Rec., 101, 130.)

The arrangement also contemplates that the correspondent shall at all times keep the open trades of those who trade through his office adequately margined. Thus the correspondent assumes the burden and responsibility of collecting from each of his traders the required margin at the opening of the trade and such further margins, from time to time, as

a change in the market price may require. As a result the Hammond Company has no personal concern with the amount of margins actually collected by the correspondent from traders.

Accordingly the Hammond Company, as soon as each trade is accepted, charges against the correspondent, on account of that trade, a regular margin of $10 for each ten shares of stock, or 1,000 bushels of grain, and another like margin, whenever, by the adverse course of the quotations, the first margin is exhausted, and this is repeated, as often as the price of the stock in the quotations reaches the point, to which the already deposited margins carry the trade. (Rec., 220,222.)

This imposes upon the correspondent not only the burden of collecting the margins from his traders, as he does, but also that of determining when a trader's deal shall be terminated for his failure to deposit the requisite margin. The manner of doing this is for the correspondent to write out a similar telegraphic order to close the trade, and send it over the wire (Rec., 70, 84); and it is filled in the same way and is followed by a like reply from the Hammond Company accepting the order (Rec., 72) as when the customer himself, as above stated, orders his trade closed.

The trader is charged a so-called "commission" of $2.50 upon each ten shares of stock. (Rec., 220.) All trades are in lots of ten shares or multiples thereof. Of this $2.50, the correspondent receives four-fifths, and the Hammond Company one-fifth. The correspondent pays the expenses of his own office. He also pays the Hammond Company $50 per month, which the corre-

spondents testify is "for the use of the wire." (Rec., 87, 114, 145.) This four-fifths of the aggregate of the commissions, less said expenses, is all that the correspondent gets out of the business. As already explained, he receives none of the profits of the transactions.

The method of carrying out the business is as follows: Each day the Hammond Company enters on the debit side of a statement (for form see Rec., 196, 200), opposite the number of each trade opened that day, a charge (for margins) of $10, if the trade is, as are the majority (Rec., 152), for ten shares, and if for more, then $10 for each ten shares thereof. (Rec., 220, 222.) This statement is mailed on the evening of that day, and the correspondent upon its receipt the next morning (Rec., 96), deposits in a certain bank, designated by the Hammond Company, in his city the debit balance shown (Rec., 220, 94-96), and sends to that company a duplicate deposit slip (Rec., 153). A telegram signed by the bank,—but usually written out by the correspondent—is also sent to the Hammond Company, notifying it of the deposit of the money. (Rec., 153, 182.)

When any trade is closed out, as above stated, with a profit to the trader, this profit plus the margin collected on the trade, is entered on the credit side of this daily statement opposite the number of the trade. If the closing of the trade has resulted in a loss to the trader, it is deducted from the margin charged against, and collected on, that trade as aforesaid and the balance, if any, is carried to the credit side of the statement. One-fifth of the commissions on these closed trades (of that day) is charged on the

debit side under the name of "wire service." If the amounts thus entered as credits on the daily statements exceed these debits, the Hammond Company accompanies the statement with its check, payable to the correspondent, for the net credit balance, unless the amount is small, when it is carried into the next day's statement. If these debit items of a day's statement aggregate more than these credit items, the correspondent the next day deposits in the bank at his city, to the credit of the Hammond Company, this debit balance, and notifies the Hammond Company as above stated. Thus the balances of accounts, as between the correspondent and the Hammond Company, are practically settled the next day. (Rec., 221.)

These margins become the profits of the Hammond Company to the extent that the trades are closed at a profit to it. If trades result in profits to the traders, the Hammond Company pays them their profits (its losses) by remitting these in this one check to the correspondent, who distributes them among the winning traders.

It is through this system of daily accounts that the *Hammond Company* collects the *full* margins ($10 on each 10 shares of stock) on these trades, and also pays the traders its losses to them. This is all done through the correspondent.

It is also a significant fact, that in the first instance, the Hammond Company, through these statements, collects, and until the closing of the trade retains, the entire commission, and upon the closing of these trades pays the correspondent his share of it.

Each trade is closed at a price that will realize the entire commission. (Rec., 190.) In other words, if the customer orders a trade for ten shares of stock, and deposits $10 margin, and does not follow it by the deposit of further margin, the trade is closed out at a market price, $7.50 away from the opening price, leaving $2.50 commissions, fifty cents of which the Hammond Company retains by charging it as a debit on these statements, when the trade is closed (Rec., 143, 149), under the name of "wire service", and the balance ($2), it pays through these statements to the correspondent.

The foregoing fully describes the *method* by which the great bulk of the business in these Illinois offices is conducted and the trades are opened and closed. (Rec., 43, 106, 129, 147.)

In the two Illinois offices, to which the evidence relates, practically no business is conducted except that of collecting these orders and sending them to the Hammond Company. No other concern has a wire running into these offices. All their business goes to the Hammond Company (Rec., 108), except in the case of Battle & Dickes, who have bought some shares of stock *for investment* through other persons. (Rec., 152.)

The evidence does not satisfactorily disclose the volume of business of either of these offices. Mr. Dickes gave as his opinion, that the business that his firm sent to the Hammond Company would not average one thousand shares a month, most of which was divided into ten and twenty share lots (Rec., 152); and Mr. Babb declined to give an estimate of the volume of

his business. (Rec., 102, 103.) As, however, this business justifies the expense of maintaining these private wires, the fair inference is that its volume is large. Indeed, the secretary of the Hammond Company testified (Rec., 44), that Battle & Dickes sent them orders daily and Babb did nearly every day.

The foregoing facts appear without contradiction or conflict in the evidence. The only witnesses on this subject were Babb, Battle and Dickes, appellee's correspondents, and Williams, its secretary.

The main objection to the master's report rests (1) upon its omission of some facts—probably because the master deemed them merely evidentiary—which are essential to an understanding of the nature of this business, and (2) its failure always to distinguish between the facts and the master's conclusions. Some of its statements, which are but his conclusions, are liable to be mistaken for a recital of *facts*.

The real question then is, whether these undisputed facts show that, at the time of the service of process, the Hammond Company was, in contemplation of the law, transacting business in Illinois through these correspondents as its agents, so as to make service upon either of them a valid service upon it.

This is not to be determined by the *form*, which the parties have very adroitly attempted to give to the business and their relation to it. The Hammond Company concedes that its aim and purpose has been to escape being subject to suit in Illinois, and that, as the master's report says (Rec., 224), "it has endeavored so to arrange and conduct its business as to avoid such a contingency."

Its reason for this doubtless lies in the fact that, under an Illinois statute enabling one losing at gambling to recover from the winner the amount lost (Ill. R. S., ch. 38, sec. 132), its Illinois traders may recover from it their losses.

But the question is, what is the *real* relation of these parties to each other and to the business. In

Italian-Swiss Colony v. *Pease*, 194 Ill., 98,

where service upon an agent of a foreign corporation was unsuccessfully attacked, the court said (106):

"The appointment of an agent need not be proven by direct testimony that the principal, by affirmative words, constituted him his or its agent. The appointment may be established by implication of law arising out of the conduct of the parties, or by way of estoppel. We see no reason why this implication or estoppel will not arise as well in favor of one who seeks to serve the process of the courts on the agent as in favor of one who seeks to bind the principal by the acts and contracts of the agent." In

Conn. Mut. Ins. Co. v. *Spratley*, 172 U. S., 602, 615,

this court, in sustaining service on a foreign corporation, said:

"In such case it is not material that the officers of the corporation deny that the agent was expressly given such power, or asserted it was withheld from him. * * * In the absence of any express authority, the question depends upon a review of the surrounding facts and upon the inferences which the court might properly draw from them."

Any other view would enable foreign corporations to enjoy the benefits, while escaping the burdens, of transacting business in another state.

In order, then, to see the situation in its real light, the subterfuges, to which the Hammond Company and

its correspondents resort in order to put a false front upon it, need to be considered.

1. The statements of account daily sent out by the Hammond Company contain the statement: "We have no agents," and the agreement between the correspondent and the Hammond Company is to the same purport. (Rec., 200.) But whether these correspondents are such agents as may be served "is to be determined by all the facts and circumstances of the case, and not by the mere fact that none of them has been named as such agent." (*Norton* v. *Atchison R. R.*, 61 Fed., 620.)

The weight to be given to this recital in the statement may be gauged by another recital in these written statements, as follows (Rec., 200):

"We solicit and will receive no business except with the understanding that the actual delivery of all property bought from us, or sold to us, is in all cases contemplated and understood."

A similar protestation is found in their agreement. Compare this provision with the undisputed testimony in this record, that, as the master finds (Rec., 222), practically *all* orders to "buy" or "sell," sent by these correspondents to the Hammond Company, are in fact closed, not by delivery, but by countertrades and the settlement of the differences in prices.

Thus the appearance sought to be given by these recitals is that the Hammond Company is conducting a legitimate business of buying and selling stocks, when in reality it is conducting a bucket shop. Were this the issue before this court, would it accept this recital and disregard the reality? Certainly not.

Why, then, should the real situation be disguised by the dubbing of these Illinois representatives as "correspondents" and these recitals that they are not "agents"?

2. Another misleading misnomer is the word "commissions." Usually, if not always, a commission implies an agency. As applied to transactions upon a regular commercial exchange, it is the compensation, which the member of the exchange (the broker) receives from his principal for executing in the open market of the exchange his principal's orders. It was doubtless this that led the bucket shops to give this name to the sum which they exact from their traders.

But the relation between such a concern and its traders is in no sense that of principal and agent. It is that of two principals. Nor is the so-called commission in reality one. This is well brought out in *Smith* v. *Western Union Tel. Co.*, 84 Ky., 664, where the court said (italics ours):

"The evidence tends strongly to show that the appellant, at the time complained of, was not a grain and provision merchant, but was the keeper of a bucket shop, which is described as a place where grain, provisions, etc., are posted on blackboards as they come in on the ticker. *The shop buys or sells indifferently*, and always at the price appearing for the time being on the blackboard. Should a customer wish to make a deal in June wheat, say buy one thousand bushels, he sees the last quotation, say one dollar per bushel; he gives the shop the margin, say one cent on the bushel or ten dollars; *the shop charges a fixed commission*, say one-quarter of a cent per bushel; the shop does not notify the customer of the fluctuations of the market, but he looks out for that on the blackboard. Wheat on the next quotation goes down, say three quarters of a cent; this loss of three- quarters of a

cent, added to one-quarter of a cent *charged for commission,* makes one cent per bushel on one thousand bushel, or ten dollars. This exhausts or "freezes" out the margin, the deal is closed, and the shop has made ten dollars. On the other hand, should wheat advance one cent per bushel, the customer would make one cent per bushel less one-quarter of a cent per bushel, *the commission,* and the shop would lose three-quarters of a cent per bushel."

Another case illustrating this is

Central Stock & Grain Exchange v. *Board of Trade,* 196 Ill., 396.

The leases of the telegraph wires in this record (Rec., 203, 217), show that the present appellee, the Hammond Company, is the successor of the appellant in that case. They were originally made to the Central Stock & Grain Exchange *of Chicago,* appellant in the above case. Some of the counsel for that appellant are also counsel for the Hammond Company in the present record. After that decision, the Central Stock and Grain Exchange became the Central Grain and Stock Exchange *of Hammond,* Indiana, and subsequently the Hammond Elevator Company, the appellee here, the latter succeeding to the offices and business of the former. (Rec., 36.)

The first of these companies maintained its main office in Chicago, and in that suit—a bill in equity, through which that company sought to retain the quotations of appellant—the character of its business was involved, and the Illinois Appellate Court denied it the quotations, because it was a bucket shop, and the Supreme Court affirmed that decision. The report of the case in the Appellate Court, which more

fully sets forth the facts (98 Ill. App., 212), will show that the office of the "correspondent" was there present also; that the "commissions" were charged at the same rate, and divided between the correspondent and the principal concern in the same proportion as shown here. The latter's portion of it was in that case, however, called not "wire service," but (page 222 of 98 Ill. App.) "the proportion of the commission."

But the feature in that case, to which this court's attention is specially called, is that this "commission" (figured at the same rate), was collected by the bucket shop in that case *at its main office,* where the trade was directly between it and its traders, and without the intervention of any correspondent. As disclosed by the printed abstract of record in that case (at p. 234), one Max Bass, in testifying to transactions directly with the Central Stock & Grain Exchange at its office in Chicago, said:

"They do not charge me a commission that I know of. If I understand it rightly, I have an agreement with them to pay them one-sixteenth *for the privilege of trading with them* in the grain and produce market. That is, one-sixteenth in addition to trading at the market with them. On stocks it is $25 on one hundred shares."

Adolph Flick and Harry Pagan, other witnesses, testified to the same effect. (Abstract of Record in that case, 128, 230, 234.)

The only purpose of thus referring to the record in that case is, to bring out just what, in this kind of business, this word "commission" really means, and to show that it is not a compensation by a principal to an agent, but measures the advantage, which the bucket-shop exacts in the trade, or, as expressed by some,

it is the sum paid by the trader for the privilege of making the bet. This is shown by the fact that the *same sum* is exacted, whether the two principals in the bet meet directly or through the medium of the "correspondent." In a transaction between two principals it is a misnomer to speak of a "commission."

It will thus be seen that this "commission" is but a part of the false front, that is intentionally given to this business, and that the master erred in treating it as signifying that the correspondent was the agent of the *trader*.

On the contrary, it shows that the Hammond Company charges all its traders—as do all bucket-shops—a regular percentage, by way of advantage, upon its trades, and, in order to compensate these agents who gather business for it in Illinois, for their services, it pays them, instead of a regular salary, four-fifths of its "commissions" on the business they send, out of which they are required to pay their office expenses. They are no less agents of the Hammond Company because their compensation is graduated upon the amount of the business they gather, instead of being a fixed salary. (*Cone* v. *Tuscaloosa Co.*, 76 Fed.,891.)

This is emphasized by the manner of collecting these "commissions." As already shown, they are collected from the trader as a part of the margin he pays, and *are transmitted in their entirety immediately upon the opening of the trade, to the Hammond Company,* which retains them, until the trade is closed, when it pays the correspondent his agreed proportion.

3. This also exhibits another misnomer, which

deterred the master from seeing this situation in its real light. We refer here to the term "wire service" —the name *now* applied in this business to that portion of the commissions paid by the trader, which is retained by the Hammond Company. That company's predecessor, the Central Stock & Grain Exchange, and its correspondents, did not, as already shown, call this by this name, but accurately spoke of it as the bucket-shop's "proportion of the commission." Indeed, at times in this case Babb called it "a commission on trades I make with them" and a charge "for doing business." (Rec., 107.)

Is it, then, in reality, as the master finds (Rec., 225), a compensation for the *use of the wire,* or is it the proportion which the bucket-shop, in dealing with its agents, retains out of the commission? To this the record furnishes but one answer. If it were in reality a charge for the use of the wire, it would naturally be based upon the actual use made of the wire. But a telegram covering a trade of one thousand shares of stock makes no greater use of the wire than one of ten shares; yet the charge for this so-called wire service in the former is one hundred times that charged in the smaller trade.

So, if it were in reality a charge for wire service, the longer the wire the greater would be the charge. But as disclosed in this case, the shorter wire (that of Battle & Dickes, at Aurora) has the larger charge. (Rec., 51.)

Again, each of these correspondents, as already stated, pays the Hammond Company $50 per month "for the use of the wire." It is therefore unduly tax-

ing credulity to expect one to believe that this second charge is rightly named, or is in reality, a further charge for wire service.

4. Another pretense, that the master regarded as material in determining the relations of these parties, is that part of the contract between the Hammond Company and its correspondents, which characterizes the relation between them as that of principals. But is it not perfectly apparent from the mere statement of the course of business that the correspondent is in no sense a principal?

There is, as the master in effect finds (Rec., 225), no independent trading *between the correspondent and the trader.* Instead of accepting the order of the trader when tendered, the former transmits it over the wire, and the trader has no trade, until the return message, accepting the offer, is received by the correspondent. Again, the customer's order is earmarked by a number, and this identity of the trade is preserved from start to finish in all the accounts.

Nor is the relation of the correspondent to the Hammond Company that of two principals. The only apparent ground for claiming this is that the orders are forwarded to that company in the name of the correspondent. But the making of the contract in the name of an agent does not eliminate the real principal, although thereby the agent doubtless does also become liable on the trade. The legal attitude of such an agent is that of a *del credere* agent. That is really what the correspondent is.

There is but one trade, and to one trade there can be but two principals. Those principals here are the

Hammond Company and the trader. The loss of one is the gain of the other, and *vice versa*. The fact that neither the profit nor the loss is the correspondent's, demonstrates that he is in no sense a principal. Indeed the correspondent regards the trade he forwards, not as his trade, but that of the trader. (Rec., 106, 155.)

If not a principal, he must be an agent of one or the other, or both, of these principals. Which is he? To an individual trader his relation is casual and occasional. To the Hammond Company it is continuous and permanent. He not only receives and forwards the trades, but collects from the traders the margins exacted by the Hammond Company, and deposits them for that company in a local bank. If a trade requires further margin, he collects this also, and transmits it to the company in the same way. If, on the termination of the trade, there is anything in margins or profits to be paid by the company to the trader, the correspondent is also the agency, by which this is done. This is not an occasional, but a daily, occurrence.

In other words, the correspondent is the vehicle or instrument, by which the Hammond Company continuously gathers these trades in Illinois, collects these margins (which are in some cases its profits), and pays to its winning traders the money which constitutes its losses to them.

When, therefore, the false front, which the Hammond Company has attempted to give to this situation by the misuse of names and phrases, is pushed aside, and it is viewed in its real light, it is seen that a cor-

poration, with its principal place of business in Indiana, desires to gather business from different cities in Illinois, and to that end it leases and controls private telegraph wires running from its place of business to cities in Illinois; that, to induce persons to act as its agents for this purpose in these cities, it agrees, in lieu of a fixed salary, to compensate them by a certain percentage of the business they send, out of which they are to pay their office expenses; that this percentage is established at four-fifths of the regular charge, which, under the misnomer of "commissions," the Hammond Company and like institutions charge all their customers for the privilege of trading; that the Hammond Company, desiring to conduct this business on a strictly cash basis, requires each agent to collect from traders through his office all margins in advance, and to make good to the Hammond Company any default in doing so; that the service rendered by the agent is not only the gathering and forwarding of these trades, but the collection from the traders, and transmission to the Hammond Company, of its margins, including the *full* charge for the privilege of trading, or "commission", with it, and also the disbursement by the correspondent of any moneys or return margins this company may owe the traders.

When thus rightly understood, can there be any doubt that the Hammond Company is *doing business* in Illinois through these correspondents as its agents?

Under these circumstances, will public policy permit that company to claim that these correspondents are not its agents, and thus enable it to enjoy the privileges of extending its business into Illinois, without incurring a corresponding liability to be sued there?

Second. What, then, is *the law* applicable to these facts?

To constitute a legal service of *mesne* process on a corporation of another state (1) the writ must be personally served, within the jurisdiction, upon its officer or agent, and (2) the company must, within the contemplation of the law, be doing business within the state.

(1) As a foreign corporation enters a state only by comity and not by right (*Paul* v. *Virginia*, 8 Wall., 168), the State of Illinois lawfully might pass, as it has done, the following statute (Rev. Stat., ch. 32, sec. 26):

"Foreign corporations, and the officers and agents thereof, *doing business in this state*, shall be subjected to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers." * * *

The general law of Illinois, under which Illinois corporations of like character with the Hammond Company are organized, provides (Rev. Stat. Ill., ch. 32, sec. 5) that they "may sue and *be sued*," and in defining the manner, in which a home corporation may be sued, another Illinois statute (ch. 110, sec. 5) provides:

"An incorporated company may be served with process by leaving a copy thereof with its president if he can be found in the county in which the suit is brought, if he shall not be found in the county, then by leaving a copy of the process with any clerk, secretary, superintendent, general agent, cashier, principal, director, engineer, conductor, station agent or any agent of said company found in the county."

This statute, in authorizing service of process upon

any agent, as it does (see *C. & R. I. R. R.* v. *Fell*, 22 Ill., 333), differs from the statutes of some states, which require service upon the "general," or "managing," or "business," agent.

This statute applies to foreign corporations.

Midland Pac. Ry. Co. v. *McDermid*, 91 Ill., 170.

Liability to be sued and served like a home corporation, is one of the liabilities that Illinois, by said section 26, imposes upon foreign corporations as a condition of doing business in the state. In

Wilson Packing Co. v. *Hunter*, 8 Biss., 429 (approved by this court in *Barrow Steamship Co.* v. *Kane*, 170 U. S., 100),

a suit in chancery involving service in Illinois, Judge Drummond expressly so held.

By availing itself of the privilege of doing business in a state, a foreign corporation impliedly assents to be there sued and served in the mode provided by the state statute, provided this does not violate the fundamental principle that requires notice of a suit before a party can be bound by it.

St. Clair v. *Cox*, 106 U. S., 350.
Railroad Co. v. *Harris*, 12 Wall., 65, 81.
Ex parte Schollenberger, 96 U. S., 369.
Merchants Mfg. Co. v. *Grand Trunk Ry. Co.*, 13 Fed., 358.

In *Merchants Co.* v. *Grand Trunk Railway Company*, *supra*, Judge Wallace said:

"At common law, process must be served on its principal officer within the jurisdiction of the sovereignty where the corporate body exists. But it can waive this

requirement and consent to be served in a different manner, and when it does this it stands on the same footing with a natural person. When it avails itself of the privileges of doing business in a state whose laws authorize it to be sued there by service of process upon an agent, its assent to that mode of service is implied. Accordingly, it has been repeatedly held that a foreign corporation consents to be amenable to suit by such mode of service as the laws of the state provide, when it invokes the comity of the state for the transaction of its affairs."

Under these two Illinois statutes any foreign corporation doing business in Illinois is in the attitude of those foreign insurance corporations, which are required by state law to designate some *particular person*,—frequently a state official, in no way connected with the transaction of its business,—as an agent for service. Service of process on such an agent is always recognized by the federal courts.

In an *action at law* in the federal court in Illinois a service according to this statute upon any foreign corporation doing business within the district, would be sufficient, because service of process is within section 5 of the Act of Congress of June 1, 1872 (R. S., sec. 914), which declares that "the practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be," to that existing in the state courts.

Amy v. *Watertown,* 130 U. S., 301.

This principle is not shaken by *Barrow Steamship Co.* v. *Kane,* 170 U. S., 100, which holds only that a

state statute relating to service on a foreign corporation cannot be allowed to *restrict the jurisdiction* of the federal courts by limiting service of process on foreign corporations to suits based upon causes of action *arising within the state.*

Nor is *Amy* v. *Watertown, supra,* modified by *Shepard* v. *Adams,* 168 U. S., 618, which holds only that the words, "as near as may be," in section 914, *supra,* reserve to the federal courts a certain discretion in requiring conformity with state practice, under which they might sustain service of process under a rule conforming to a statute, in force when the rule was adopted, although the statute was subsequently changed.

But conformity with a state law providing a mode of service upon foreign corporations, when it does not restrict federal jurisdiction, seems required by a more general principle, which is applicable as well to *chancery* and *admiralty* suits, as to common law cases. This principle does not exclude any other method of service the federal courts may adopt, even in a class of cases not covered by the state statute, but does require that a service under such statute shall be deemed sufficient.

This is the principle, already mentioned, that a foreign corporation, by availing itself of the comity of a state to transact business therein, must be conclusively presumed to have assented to the mode of service of process prescribed by the state law, provided it is not so unreasonable as to infringe upon "due process of law."

No sound reason can be suggested why this should

not apply to *all* suits in the federal court. (*Ex parte Schollenberger,* 96 U. S., 376.) Otherwise the theory of federal jurisdiction based upon diverse citizenship would be violated.

Besides, if service under the state law is good enough in common law cases, why not also in a chancery or admiralty suit?

This view is sustained by the decisions. Thus, it is held in admiralty suits,—which, like equity cases, are not within the statute requiring conformity with the state practice,—that service upon a foreign corporation under the state law is sufficient.

In re Louisville Underwriters, 134 U. S., 488.
Doe v. *Springfield B. & M. Co.,* 104 Fed., 684.

In chancery cases service of process under the state law is sustained.

Connecticut Ins. Co. v. *Spratley,* 172 U. S., 602.
Evansville Courier Co. v. *United Press,* 74 Fed., 918.
McCord Lumber Co. v. *Doyle,* 97 Fed., 22; 38 C. C. A., 34.

(2) The other requisite of a legal service is that the foreign corporation must be doing business within the state.

St. Clair v. *Cox,* 106 U. S., 350.
Connecticut Ins. Co. v. *Spratley,* 172 U. S., 615.

What, then, is a sufficient "doing business" within the state?

Connecticut Ins. Co. v. *Spratley*, 172 U. S., 602.

There a foreign insurance company had once solicited business in a state, but had ceased to do so and had withdrawn its soliciting agent before process was served. It still had, however, some policy holders residing within the state, who paid their premiums to an agent located without its borders. An agent of the company went into the state specially to investigate a claim under one of its policies, and while there was served with process, and this court sustained the service, holding that "the company was doing business in the state."

See also

In re Hohorst, Petitioner, 150 U. S., 653,

where service upon a foreign steamship company was sustained, when made upon a firm which rented and maintained in New York in its own name an office where the usual monetary transactions of the corporation were transacted by the firm as the agents for the company. Whether the compensation of the firm was a percentage of the business done does not appear from the report.

The weight of authority is, that a corporation which merely solicits business or orders for merchandise, as commercial houses do through drummers, is not doing business within a state, so as to warrant service of process upon the solicitor. But the only province of the drummer is to take orders from the customer and mail them to his house for its acceptance. He neither receives the acceptance of the order, nor delivers it to the customer, nor collects or disburses the moneys in-

volved in the transactions. Nor does he maintain an office in the state.

But the rule is otherwise, as decided by Judge Lacombe in *Cone* v. *Tuscaloosa Co.*, 76 Fed., 891, where the selling agent resides in the state, the goods are sent to him, and he sells on a commission and guarantees the solvency of the purchasers. So in

Block v. *R. R. Co.*, 21 Fed., 529,

Mr. Justice Brewer held that a railroad company, which did not operate its railroad in a state, but had there an office for the purpose of soliciting business and also an agent there employed to further the transaction of its business in the state where its road ran, was subject to service of process on such agent.

Denson v. *Chattanooga, etc., Assn.*, 107 Fed., 777.

There a Tennessee Loan Association, whose sole business was loaning its funds to stockholders on real estate security, had no local office or agent in Alabama, but sent there a traveling agent, whose business was to solicit subscriptions to its stock and to obtain applications for loans and submit the same to the home office. At the solicitation of such agent a resident of Alabama signed an application for stock in the association, and an application for a loan on the security of such stock and a mortgage on real estate in Alabama. The applications were forwarded to the home office, where defendant's board of directors directed the stock to be issued and the loan to be made. A note and trust deed were then prepared at the home office and sent with the stock to

the agent. At the same time a check of the association on a Tennessee bank in favor of the applicant, was sent to another resident of Alabama, with instructions to him to deliver the check to the applicant, when he should have executed and delivered the note and trust deed. The note was dated in Tennessee and payable at the home office. The Circuit Court of Appeals (5th Circuit), held this was doing business in Alabama in violation of a statute of that state prohibiting it, except on certain conditions, with which the association had not complied, saying that "all the business of loaning money to Denson, with the single exception that the association in Tennessee said, 'Yes,' was transacted in the State of Alabama."

That case is like the one at bar, except that it related to a single transaction, while here the transactions were of daily occurrence for a long period.

A quite similar case is

U. S. Saving & L. Co. v. *Miller*, 47 S. W., 17.

See also,

Van Dresser v. *Oregon R. & N. Co.*, 48 Fed., 202.

Palmer v. *Chicago Herald Co.*, 70 Fed., 886.

Locke v. *Chicago Chronicle Co.*, 107 Iowa, 390.

Furthermore the Hammond Company is transacting business in Illinois, because its bets with these traders are *Illinois contracts.* While each trade requires the acceptance of the Hammond Company in Indiana, the offer does not become a completed trade, nor is it treated as such, until the acceptance is re-

ceived in Illinois. While there is no direct evidence on this point, it is apparent from the whole situation that if, intervening the times that the order is sent in and the reply is received in Illinois, the trader should fail to pay his margin, and the correspondent for this reason should wish to call the trade off, he is at liberty to do so. This is probably the reason, why the time when the acceptance gets back to the Illinois office is taken "as the time when the order is filled." This in itself fixes the time when, the negotiation becomes a contract, and shows that these trades are Illinois transactions.

This is also apparent for another reason. Doubtless an offer becomes a contract, as soon as the acceptance is committed to the regular mail, or a telegraph company. But, according to the better reasoned cases, the rule is otherwise when the acceptor commits his acceptance to his own agent or an agency within his control.

In re London & Northern Bank, L. R. (1900), 1 Chcy. Div., 220.

Thayer v. *Middlesex Mut. Fire Ins. Co.,* 27 Mass., 325.

Bryant v. *Booze,* 55 Ga., 438.

Within this principle the wire, over which the acceptance passes to the Illinois office, is within the control of the Hammond Company.

Especially should this principle apply, where the parties themselves fix as the time when the transaction shall become a contract, as they do here, the time when the return message reaches its destination.

The case is then analogous to the insurance cases,

which hold that, when an application for insurance is signed in one state and forwarded to the home office of the company in another, where the policy is issued and mailed back to the applicant's state, to a person, other than the applicant, to be there delivered to the applicant—especially where the policy provides, that it shall not take effect until the first premium is paid—it is a contract of the state of the applicant, despite recitals in the policy seeking to make it a contract of the state of the company's home office.

Equitable Life Assurance Soc. v. *Clements,* 140 U. S., 226, 232.

Wall v. *Equitable Life Assurance Soc.,* 32 Fed., 273.

Hicks v. *National Life Ins. Co.,* 60 Fed., 690; 9 C. C. A., 215.

Equitable Life Assurance Soc. v. *Winning,* 58 Fed., 541; 7 C. C. A., 359.

Berry v. *Knight Templars,* 46 Fed., 439.

Fletcher v. *New York Life Ins. Co.,* 13 Fed., 526.

Mut. Ben. Life Ins. Co. v. *Robison,* 54 Fed., 580.

In *Wall* v. *Equitable Life Assurance Society, supra,* Justice Brewer, in holding an insurance policy a Missouri contract, said:

"The defendant is a New York corporation doing business in the state of Missouri; the insured was a citizen and resident of Missouri, and made his application here, which was forwarded to New York; the application was accepted, the policy fully prepared and signed in that state, and sent to Missouri, and delivered to the applicant here. By the terms of the

policy, all premiums are payable at the defendant's office in New York. If the sum insured should become payable, the payment is to be made at its office in New York."

In *Equitable Life Assurance Soc.* v. *Winning, supra,* the Circuit Court of Appeals of the 8th Circuit, said:

"As the assured was a resident of Saline county, in the state of Missouri, at the time he became insured, and as the policy was delivered in that state, and the first premium was there paid, the contract evidenced by the policy is a Missouri contract."

In the *Berry* case, *supra,* the court said:

"It is said the policy is an Illinois contract, and to be construed by the laws of that state. But clearly this is not so. The company established an agency, and carried on its business, in this state [Missouri]. It was through that agency the assured, who was a citizen and resident of the state, made his application and received his policy. The fact that the policy was signed by the officers of the company in Chicago has no significance. It was transmitted to the company's agent in Missouri, who received the premium, called, in this case, an 'entrance fee,' and delivered the policy to the assured, at his home in this state, and it took effect at that place and from that date. * * * In such cases the company cannot, by any contrivance or device whatever, evade the effect and operation of the laws of the state where it is doing business."

In the *Fletcher* case, *supra,* Judge Treat, in holding the contract a Missouri contract, said:

"It may be that the formal acceptance of the proposed contract was, by the *letter* of the contract, to be consummated in New York. The broad proposition, however, remains, no artifice to avoid which can be upheld. The statutes of Missouri, for salutary reasons, permit foreign corporations to do business in the state on prescribed conditions. If, despite such conditions, they can by the insertion of clauses in their policy

withdraw themselves from the limitations of the Missouri statutes, while obtaining all the advantages of its license, then a foreign corporation can by special contract upset the statutes of the state and become exempt from the positive requirements of law. Such a proposition is not to be countenanced. The defendant corporation chose to embark in business within this state under the terms and conditions named in the statute. It could not by paper contrivances, however specious, withdraw itself from the operation of the laws, by the force of which it could alone do business within the state."

So the "paper contrivances," already referred to, by which the Hammond Company, while transacting this extensive business through these Illinois offices, has attempted to escape liability for suit in that state, should not be successful.

Ransome v. *State*, 91 Tenn., 716.

That was an indictment under a criminal statute prohibiting betting on horse races outside of the enclosure of the race track, and it appeared that the defendant maintained at Chattanooga, Tennessee, a place called the "Turf Exchange," where he took orders for bets and telegraphed them to a bookmaker upon a race track at another place, the customer paying ten cents on each order in addition to the amount bet. The defendant settled with the bookmaker once a week, giving a statement of all the business. The odds offered by the bookmaker were posted in this turf exchange, from which a telegraph wire ran directly to the track. The card furnished each better read: "Commission Office. No betting done or permitted here." The court held, however, that the betting was done in Chattanooga, and sustained the indictment.

These trades being, then, Illinois transactions, the Hammond Company was, at the time of service, engaged in transacting business extensively in that state.

It also follows, that, as these correspondents were the only agencies through which this company transacted this business in Illinois, they must be held agents upon whom service may be made, because (1) the Illinois statute authorizes a service upon *any* agent, and (2) they are the *only* persons within the state, upon whom service could be made, *there being no officers of the company, or other kinds of its agents within the state.* (Rec., 34, 35.) Were this otherwise, the anomaly would be presented of a corporation extensively engaged in transacting business in the state without being subject to suit and service there.

It remains to call attention to two direct authorities upon the particular question at bar. The first of these—one "on all fours" with the case at bar—is

Boyd Co. v. *Coates*, 24 Ky. L. R., 730.

That was a case brought against a concern of the same kind as the Hammond Company, having its headquarters at St. Louis. It moved to quash the service of summons upon its "correspondent" in Kentucky, upon the ground that he was not its agent, but the court said:

"To sustain this motion the defendant introduced as a witness James E. Boyd, who testified that he was the president of the Boyd Commission Co.; that it was a foreign corporation, engaged in dealing in stocks on the New York market, and in grain and provisions on the Chicago market; that the defendant company had no agents, but did have correspondents, of

which R. L. Carter was one; that his company had paid the Western Union Telegraph Co. to put a private wire into the office of Carter in Clinton, which connected with the office of the company in St. Louis, Mo., and for the rent of which wire they paid $41 per month, which they sublet to Carter; that Carter would transmit over this private wire orders obtained by him for the purchase of the stock of various kinds, for which he charged one-fourth of one per cent. commissions on all deals made with customers; that the company, as Carter's agent, bought these stocks on the market and gave Carter one-half the commission, and kept the other half; that all commissions collected by Carter were deposited by him to the credit of the company in the Clinton Bank; and that they checked out to Carter the amount due by him from the moneys so deposited; that they paid all losses incurred upon these deals and appropriated all the profits arising therefrom except the commission paid to Carter. * * * We are of opinion * * * that Carter was the agent of appellant company; and that the service was properly had upon him under section 51 of the Code."

That the business there was of the same character as the business here, is further shown by the statements of the opinion that the trades were in lots of ten shares of stock, upon which $10 was put up as margin, out of which $2.50 was taken as a commission, and the trade automatically exhausted, when the market went against the trader $7.50 from the opening price.

The other case, which relates to the same kind of business, is *Central Stock & Grain Exchange* v. *Bendinger,* 109 Fed., 926; 48 C. C. A., 726.

The appellant in that case was, as already shown, the predecessor of appellee, the Hammond Company, and it was represented by the same firm of attorneys, as appears in this record for the Hammond Company.

That suit was brought by a *cestui que trust* against that appellant, whose principal place of business was in Chicago, to recover trust funds paid as margins by her trustee (one Stichenoth) to the correspondent (Forbus & Co.) of the Central Exchange at Cincinnati. The method of conducting the business was identical with that shown here, as will appear from the following extract from appellant's brief in that case (pp. 16, 17, 22):

"For this purpose, and to carry on the business, M. S. Forbus & Co. maintained an office in Cincinnati, furnished and equipped it with their own means, employed whatever help might be necessary, and paid all the expenses of managing and conducting their office, and then held themselves out to the trading public as ready to take their business.

A leased or private wire was used between the office of M. S. Forbus & Co. and the office of the appellant in Chicago, for which Forbus & Co. paid a rental to the appellant, the appellant paying a rental therefor to the Western Union Telegraph Company.

Customers who dealt with Forbus & Co. deposited or paid them whatever sum Forbus & Co. required upon any trades to be made, and Forbus & Co. treated said sums so paid to them as belonging to said Forbus & Co. and not to the appellant. If it became necessary for Forbus & Co. to pay out any money to their customers, the same was paid out of the funds of Forbus & Co. and not out of those of the appellants. The funds of Forbus & Co. were not commingled with the funds of the appellant in any way. Forbus & Co. were responsible to the appellant for any trades made or placed with the appellant. At the end of each day's business, an account was stated between Forbus & Co. and the appellant, from which the balances due either to or from Forbus & Co. and the Central Stock & Grain Exchange were ascertained, and Forbus & Co. remitted any balance due the appellant by placing the

same to the credit of the Central Stock & Grain Exchange in a bank in Cincinnati. And if any balances were due from the appellant to Forbus & Co. the appellant remitted the same by its check to Forbus & Co. * * *

The money alleged to have been paid by William Stichenoth to M. S. Forbus & Co. was merged in the account of M. S. Forbus & Co., and the same was used by M. S. Forbus & Co. in paying any losses which they sustained with their other customers, and any losses sustained by William Stichenoth were paid by M. S. Forbus & Co. from money which said Forbus & Co. received from their other customers. * * * Stichenoth himself * * * had no dealings directly with the Central Stock & Grain Exchange. * * * All of Stichenoth's transactions were with Forbus & Co. * * * Therefore it cannot be found from the testimony that the Central Stock & Grain Exchange received the money which Stichenoth claimed he placed with Forbus & Co. Whatever sum was received by the Central Stock & Grain Exchange from Forbus & Co. was in fact Forbus & Co.'s money, and no one else's."

But the Circuit Court of Appeals of the Seventh Circuit sustained a recovery against the Central Exchange, on the ground that Forbus & Co. were its agents, and that the transactions, upon which the money was paid to these correspondents were "bucket-shop" transactions, and hence that, as the trust moneys had not reached a *bona fide* holder for value without notice of the trust, it could be recovered from the Central Exchange.

We note in that record also that, while exactly the same division of commissions was made as here, the Central Exchange's part of it was not there called "wire service," but was spoken of as its share of the commissions.

It would thus seem apparent, that in this case, if before it. that court would hold that these correspondents are the agents of the Hammond Company.

It is therefore respectfully submitted that the Hammond Company, at the time of service, was transacting business in Illinois; that its correspondents served with process were its agents; that service upon them as such was service upon it, and that this case ought to be reversed and remanded.

HENRY S. ROBBINS,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 215.

BOARD OF TRADE OF THE CITY OF CHICAGO,
APPELLANT,

v.

HAMMOND ELEVATOR CO. ET AL., APPELLEES.

ADDITIONAL AUTHORITIES.

The following authorities hold that, where a foreign corporation has failed to designate a person to receive service of process in compliance with a statute requiring it, service may be made upon some other proper agent:

Foster *v.* Charles Lumber Co., 5 So. Dak., 57.
Hagerman *v.* Empire State Co., 97 Pa. St., 524.
Clews *v.* Rockford R. R. Co., 49 How. Pr., 117.
Funk *v.* Anglo-American Ins. Co., 27 Fed., 336.
American Co. *v.* Beasley, 116 Fed., 256.
Mutual Reserve Ass. *v.* Cleveland Mills, 82 Fed., 508 (C. C. A., 6th cir.).
Modern Woodmen *v.* Noyes, 158 Ind., 503.
Bankers' Union *v.* Nabors, 81 S. W., 91.

Respectfully submitted.

HENRY S. ROBBINS,
Counsel for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1904.

BOARD OF TRADE OF THE CITY OF CHICAGO,
Appellant,
vs.
HAMMOND ELEVATOR COMPANY and the WESTERN UNION TELEGRAPH COMPANY,
Appellees.
No. 215.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLEE, HAMMOND ELEVATOR COMPANY.

I. STATEMENT.

On July 8, 1903 (Trans. Rec., p. 1) appellant, the Board of Trade of the City of Chicago, an Illinois corporation, filed its bill for injunction in the Circuit Court of the United States for the Northern District of Illinois, Northern Division, on the chancery side thereof, against appellee, the Hammond Elevator Company. The bill of complaint charges that the Hammond Elevator Company is a corporation organized under the laws of the State of Delaware and a citizen of the State of Delaware. This statement, except for the

statement that the Hammond Elevator Company is receiving the quotations of the Chicago Board of Trade "within and without said district" is the only statement contained in the bill of complaint as to the residence, citizenship or place of business of the Hammond Elevator Company. (Trans. of Rec., pp. 2 and 16.)

On the same date a subpoena *ad respondendum* issued in accordance with the prayer of the bill to the Hammond Elevator Company (Trans. of Rec., p. 19), which subpoena was afterward returned by the marshal as served within said district upon the Hammond Elevator Company by delivering a true copy of the same "to Albert N. Babb, agent for the Hammond Elevator Company, at Peoria, Illinois, this 9th day of July, A. D. 1903," and "by reading the same to and within the presence and hearing of John L. Dickes, a member of the firm of Battle & Dickes, agents of the said Company, at the same time delivering a true copy thereof to him on the 8th day of July, A. D. 1903, also by reading the same to and within the presence and hearing of C. S. Battle, a member of the firm of Battle & Dickes, agent of the said company as aforesaid, at the same time delivering a true copy thereof to him on the 9th day of July, A. D. 1903." (Trans. of Rec., pp. 20 and 21.) On July 10, 1903, the Hammond Elevator Company entered its special appearance and, limiting its appearance for that purpose, moved the court in writing to set aside the return of the marshal upon the subpoena on the ground that the return was untrue in fact and insufficient in law, and prayed judgment of the court whether it should be compelled to appear or plead to the bill of complaint for the reason that it had not been served with process and was not compellable to appear or plead to the bill, and had not and did not accept service or waive service of process upon it, and charging that the defendant was not

then and was not at the date of the filing of the bill or at any other time within said district, or within the State of Illinois, and was not found at the date of filing the said bill, or at any time subsequent thereto within said district or within said State of Illinois, and that it is not a resident of the State of Illinois or said district, but is a corporation organized and existing under and by virtue of the laws of the State of Delaware and a resident of said last mentioned state, and that its principal place of business is without said state of Illinois and said district. (Trans. of Rec., pp. 21 and 22.)

In support of this motion the Hammond Elevator Company filed the affidavits of Frank C. Williams and William H. Gostlin, the secretary and president respectively of said company, both of which affidavits set up in substance that the Hammond Elevator Company has its home office at Wilmington, Delaware, and is qualified to and is doing business at Hammond, Indiana, under the statutes of Indiana authorizing foreign corporations to do business in that state, but is not and was not on the 8th day of July, 1903, or at any time since that date, in the State of Illinois or in said district, and that the president or any other officer or agent of the company is not and was not on July 8th, 1903, or at any time subsequent thereto, in the State of Illinois or said district, or transacting business for or representing the company or attending to or engaged in the business of the company in the State of Illinois or said district, and that the company is not and was not on July 8, 1903, or at any time subsequent thereto, authorized or qualified to do business within the State of Illinois in accordance with the statutes of Illinois. (Trans. of Rec., pp. 23 to 25.)

On October 5, 1903, over the objection of appellee, the Hammond Elevator Company, its motion to quash was referred to William M. Booth, one of the Masters of the court, to take evidence of the parties upon said motion and

report the same with his conclusions of law. (Trans. of Rec., p. 26.) Upon this reference testimony was taken from time to time thereafter before Mr. Booth, and on December 15, 1903, the Master filed his report upon said reference, in the Circuit Court (Trans. of Rec., p. 217), recommending that the motion of the defendant, the Hammond Elevator Company, to quash the service of process be sustained. (Trans. of Rec., p. 227.)

On the same date, by leave of court, the complainant amended its bill by making the Western Union Telegraph Company a party defendant, and filed a supplemental bill. (Trans. of Rec., pp. 227 to 230.)

On December 21, 1903, complainants', appellants', exceptions to the Master's report were overruled and the Master's report approved and confirmed, and the motion of defendant, appellee, Hammond Elevator Company, to quash the service of process, granted.

Thereupon counsel for complainant stated in open court that the complainant was unable to make any other or different service upon the defendant, the Hammond Elevator Company, within the district, and it was ordered that the amended and supplemental bills be dismissed as to the Hammond Elevator Company for want of prosecution by the complainant. (Trans. of Rec., p. 243.)

On February 23, upon a motion of the complainant for a decree *pro confesso* against the Western Union Telegraph Company, the amended and supplemental bills were dismissed as to the defendant, Western Union Telegraph Company, at complainants' costs, "without prejudice to complainants' right to institute such other suits as it may deem advisable, touching the matters in said bills contained." This order recites that it appears to the court that it has not acquired and can not acquire jurisdiction of the person of the defendant, Ham-

mond Elevator Company, and that it is not practicable to proceed in the case without the presence of the Hammond Elevator Company. (Trans. of Rec., p. 244.)

On February 26, 1904, the complainant filed its petition for appeal in the Circuit Court, which is in part as follows:

> "The above named complainant, conceiving itself to be aggrieved by the decision of this court, that it was without jurisdiction of the person of the defendant, Hammond Elevator Company, and by the orders and decrees entered by this court in pursuance of such decision, on the 21st day of September, 1903, and the 23d day of February, 1904, does hereby appeal from said final decree of February 23, 1904." (Trans. of Rec., pp. 244 and 245.)

The assignment of errors in no way complains of the entry of the order of February 23, 1904, which is the order appealed from. (Trans. of Rec., pp. 245 to 247.)

The questions passed upon under the reference of the motion to quash, as most succinctly stated by the Master, and merely elaborated in the certificate to this honorable court by the Circuit Court (Trans. of Rec., p. 248.) were:

> First, was appellee, the Hammond Elevator Company, at the time of the alleged service of process, doing business in the Northern District of Illinois so as to render it subject to service of process in an action in the United States Court for that district?
>
> Second, were the correspondents, Babb and Battle & Dickes, who were served as agents of appellee, the Hammond Elevator Company, in reality such agents that service upon them was equivalent to service upon the Hammond Elevator Company? (Trans. of Rec., p. 218.)

Upon the reference to the Master, the late William M. Booth, this case received the careful and exhaustive ex-

amination and consideration which was the characteristic of his mind and methods of work, and his orderly and concise report of facts and conclusions is one of the last monuments to his memory, which he left to his associates at the Chicago Bar. It would be impossible for counsel to place before this court the facts developed upon the hearing before the Master more succinctly and clearly than is done by Mr. Booth in this report, and we therefore take the liberty of quoting our statement of facts as to the relations of Battle & Dickes and Babb, and appellee, the Hammond Elevator Company, from the Master's report, inserting the pages of the transcript of record where the evidence appears supporting each finding of the Master:

"III."

"The defendant at the time of and for about six months prior to the service of the subpoena herein, maintained a place of business at Hammond, Indiana, and had under leases from the Western Union Telegraph Company the exclusive use (from shortly before nine a. m. to shortly after two p. m. of each business day) of certain telegraph wires running from its said place of business to certain offices in different cities in Illinois" (and in other States, Trans. of Rec., pp. 37 and 38), "including an office in Peoria, in the possession and control of the A. H. Babb mentioned in the marshal's returned subpoena herein, and another in Aurora, in the possession and control of the firm of Battle & Dickes, also mentioned in the marshal's return. (Trans. of Rec., p. 37.) In the written and printed leases of these wires signed by defendant, the offices of these 'correspondents' are designated in the printed portion of said leases as offices of the defendant. Said leases are regular printed forms prepared and used by the Western Union Telegraph Company. The cost of rental of these wires was paid to the said telegraph company by the defendant." (Trans. of Rec., p. 205.)

"IV."

"Over these wires the defendant causes to be transmitted (between nine a. m. and two p. m. of each business day) continuous market quotations of the New York Stock Exchange to said Battle & Dickes and said Babb, who post these quotations upon blackboards in their respective offices. In the vernacular of the business, Battle & Dickes and Babb are called 'correspondents.' Customers resorting to the correspondent's office and desiring to trade, give a verbal or written order to buy or sell grain or stock, which is transmitted by the correspondent in his own name over the private wire running into said office as aforesaid by the telegraph operator therein, to defendant's office at Hammond as an offer by the correspondent to buy from or sell to the defendant. These orders are for lots of ten shares of stock, or multiples thereof, and lots of one thousand bushels of grain, and mutiples thereof. Sometimes the price is mentioned by the customer and sometimes it is not. In the latter case it is understood that the trade is to be made at whatever the market is. (Trans. of Rec., pp. 63 to 70, 82 to 84.) When the order is given the correspondent exacts from the customer a margin, unless the customer already has moneys on deposit with the correspondent. In some cases when the customer is of known financial responsibility, the correspondent does not immediately call for any money on the trade." (Trans. of Rec., pp. 84-85, 125-127.)

The amount of such margin exacted is fixed by the correspondent, and varies somewhat according to the condition of the market. In the case of the correspondent Babb, the margin exacted from the customer on stocks is two dollars per share."

"V."

"The telegraph operator in sending each order gives it a number, by which the trade, if made, is subsequently designated and known, on all statements and accounts passing between the defendant and the correspondent,

and also on the books of the correspondent. The trade is also designated and identified by this number in all telegrams passing between the correspondent and the defendant respecting it. To these telegraphic orders telegraphic replies are sent back (when the defendant accepts the trade) by the defendant, over this same wire, notifying the correspondent that defendant has accepted the trade, giving the number of the trade and the price at which the trade is accepted. (Trans. of Rec., pp. 43, 65-74, 83-85, 87, 89-90, 118-124, 129-130, 132-137, 135.) Upon the receipt of the telegram, the correspondent notifies the customer of the acceptance of the order. If the defendant refuses to accept the trade, as it frequently does, the correspondent is so informed over the wire. (Trans. of Rec., pp. 41, 67-68, 83-84, 106-108, 120, 122-123.) The defendant has no dealings whatever with the customer and is not informed of his name, and has no way of identifying him. It knows its transactions as 'trades' and by number only, and has no dealings except with the correspondent."

"As soon as the telegraphic order is received and accepted by the defendant, a fixed amount of margin is charged up by it on its books against the correspondent, viz.: ten dollars per ten shares of stock, and ten dollars per 1,000 bushels of grain." (Trans. of Rec., p. 48.)

"V I."

"The correspondent charges his customer a commission of one-eighth of a cent a bushel on grain (Trans. of Rec., p. 85), and in a stock deal of twenty-five cents a share, or $2.50 on each ten shares dealt in (Trans. of Rec., p. 131). The correspondents, Battle & Dickes, do not do any grain business, and the correspondent Babb does very little in that commodity. (Trans. of Rec., pp. 115, 150.)

"The defendant keeps a regular book account with its correspondent, and in addition to charging up the margin against him as above stated, it makes an arbitrary charge against him on each deal which is called on its state-

ments rendered to correspondents 'wire service,' meaning a charge made for the use of the private wire. (Trans. of Rec., p. 51.) This charge is 50 cents on each ten shares of stock. On the books of Battle & Dickes this item is entered as 'charge.'

"In its transactions with Babb, the defendant makes no charge for wire service on transactions in grain, but only on stock transactions. (Trans. of Rec., p. 49.) In addition to the above charge the defendant charges the correspondent fifty dollars per month for the stock quotations and market 'gossip' which are sent daily over the private wire in question. (Trans. of Rec., p. 87.)

"VII."

"Each day the defendant enters upon a statement (see Complainant's Exhibit 4 and Defendant's Exhibit 1) which it that day sends to the correspondent, each trade it has that day accepted from such correspondent. (Trans. of Rec., pp. 43, 73.) This open trade is entered on the debit side of the statement by its number, and a sum as margin, equal to $10 on each 1,000 bushels of grain, and $10 on each ten shares of stock, is charged against the correspondent on such trade. (Trans. of Rec., pp. 89, 135, 178, 181.) Upon the credit side of these statements any transactions closed that day are entered, and the statement is mailed so that the correspondent gets it next morning. (Trans. of Rec., p. 73.) If it shows a debit balance, derived in the manner hereinafter explained, the correspondent (unless the amount is small, in which case it is allowed to stand) (Trans. of Rec., p. 98) deposits the approximate amount in round figures in a bank in his city (Aurora, in the case of Battle & Dickes, and Peoria in the case of Babb) to the credit of the defendant, except as stated below. The defendant thus maintains an active bank account in each of said banks. For two or three months last past said deposits have been made to the credit of the First National Bank of Hammond, Indiana, but up to and including July 10, 1903, they were made to the credit

of the defendant as above stated. If there are closed trades upon a statement of any day, and this results in a balance to the credit of the correspondent instead of a debit, a check of defendant, payable to the correspondent, and usually drawn upon the same local bank where the deposits are made to defendant's credit as aforesaid, accompanies the statement. (*Trans. of Rec., p. 100.*) Thus as a general thing, the balance due on each day's transactions, as between the defendant and the correspondent, is settled the next day, or approximately settled. (Trans. of Rec., p. 99.)

"VIII."

"These statements are on regular printed blanks of the defendant, which contain on the front page among other printed matter including the defendant's corporate name, the statement, 'We have no agents.' (Trans. of Rec., p. 96, *et seq.*)

"The back of said statement is practically filled with printed matter, of which the following is a portion:

"'FORM OF AGREEMENT ASSENTED TO BY ALL WHO DEAL WITH THE HAMMOND ELEVATOR COMPANY (INCORPORATED).

"'In consideration of the Hammond Elevator Company, Incorporated, a corporation doing business in the City of Hammond, County of Lake, State of Indiana, consenting through its manager to deal and to contract with me as principal, in buying and selling commodities, I hereby agree:

"'First. In all cases where I shall purchase from or contract to purchase from or shall sell or contract to sell to said Hammand Elevator Company any commodity, I will receive and pay for the commodity purchased or contracted to be purchased from it, and will deliver the commodity sold or contracted to be sold to it.'

"(Here follow certain provisions not deemed material, but which may be seen upon the back of Complainant's Exhibit No. 2.)

"'Seventh. That I am not and will not represent myself as being agent for said Hammond Elevator Company, but will represent that I have no authority to act for it. It is not responsable for anything that may be done by me.'"

"IX."

"On all trades the defendant looks only to the correspondent. In case of a loss if the correspondent has failed to secure sufficient margins from his customer and is unable to collect the amount from him, the correspondent must stand whatever loss is incurred. The defendant charges up and retains the amount of its charge for wire service, in any event, as well as all losses of the correspondent on trades. (Trans. of Rec., pp. 157-158, 195.)

"X."

"Each $10 deposited margins each 1,000 bushels of grain seven-eighths of a cent only as between the correspondent and his customer, instead of a full cent, the correspondent's commission aforesaid being deducted therefrom. (Trans. of Rec., p. 178.) For the same reason each $10 deposited margins each ten shares of stock only three-fourths of a dollar per share, as between the correspondent and his customer. But as between the correspondent and the defendant each $10 charged up against the correspondent margins the trade on 1,000 bushels of grain a full cent, and a stock trade one dollar per share. (Trans. of Rec., p. 183.) To illustrate: If the correspondent accepts an order for grain from a customer and fills the order by purchasing the grain from the defendant at 70 cents, the exhaust point on that trade as between the correspondent and his customer is 69⅛ cents, and if the market reaches the latter point the correspondent directs the defendant to close the trade at that point, or else he requires the customer to put up additional margins. (Trans. of Rec., p. 183.)

"But, if the correspondent gives no order to close

the trade it is not closed by the defendant at 69⅛, nor at 69, but when it reaches the latter point an additional margin is charged up against the correspondent, and this is continued until the correspondent orders the trade closed. (Trans. of Rec., pp. 70, 84, 91, 93, 129, 136, 179, 183-184, 190-193.)

"XI."

"A trade when once opened is closed either upon an order given by the customer to the correspondent and by the latter transmitted over the wire as his own order, and accepted by the return message, as in the opening order, or upon a similar order given by the correspondent because the customer fails to put up a further margin when required. In either case the closing order is sent by the correspondent in his own name. When closed, the trade is entered upon the aforesaid daily statement sent by the defendant, upon the credit side thereof, by number, and in such a way as to show a credit made up of all the margins previously charged against the trade, plus the profits, if any, on the trade, or minus the loss, if the trade is closed out at a loss. There are no entries in such statement under the head of commissions, and the correspondent's charges of that character are not shown separately from the net result of each trade. On the debit side is entered in a lump sum the defendant's charge of 50 cents of each 10 shares of stock traded in on that day. This entry is made under the letters 'W. S.' standing for wire service. No statements are rendered by the correspondent to the defendant, and he keeps no book account with it."

"The difference between the sum of these credit items on the statement and the sum of the debit items (margins and remargins charged, and said charge for wire service) constitutes the debit or credit balance, settled by deposit or check, as above stated. If the result of a particular trade is a profit to the customer, the correspondent pays the profit (plus the margins deposited) less the commission, to the customer, or retains it as a

credit balance of the customer for further transactions. If the trade is a losing one, and has not been adequately margined by the customer, the correspondent collects from the customer if he can. Whether he does or not, the defendant does not lose, since, as above stated, the defendant charges up all losses against the correspondent, leaving the latter to deal with his customer as he sees fit.

"XII."

"Summarized, the manner of conducting the business is this:

"The defendant, to enable its correspondents to gather business consisting of trades in grains or stocks, from persons living in the cities where these correspondents are located, provides and maintains private wires running from its office in Hammond, to the office of the correspondent. Over this wire it sends quotations, by the display of which on a blackboard, the correspondent encourages customers to trade. The correspondent receives numerous orders daily from those frequenting his office, and sends them in his own name over this leased wire to the defendant, which accepts them when the state of the market justifies, by return message over the same wire, the contents of which are communicated by the correspondent to the customer. The individuality of each trade is preserved throughout by a number given to it by the correspondent's operator at the outset.

"Except in the case of a losing trade, where he has failed to protect himself by securing adequate margins from his customer, and is unable to collect from the latter the amount of loss, the correspondent participates neither in the loss nor the profits incurred in a trade.

"He derives as his compensation a fixed sum, whether the transaction results in a profit to defendant or to the customer. Through daily statements and daily settlements of the balance shown thereby, the correspondent remits to the defendant, through its local bank,

whatever amounts are shown to be due from him to the defendant for margins, wire service, etc.

"In his dealings with the customer, the correspondent exacts such margins as he sees fit, in cash, the amount depending somewhat on the course of the market, or, in some cases, charges such margins to the customer, when he has an account with him. In settling with the customer, if the trade shows a profit, the correspondent pays back to the customer his deposit plus the profit, deducting only his commissions of $1.25 per 1,000 bushels of grain, and $2.50 per ten shares of stock. If the trade is a losing one and has been closed so as to exhaust the margin, the customer receives back nothing and has nothing further to pay. If a loss has been incurred greater than the margin, the correspondent calls upon the customer to make the loss good; if he does not do so the loss is the correspondent's.

"The correspondent as a rule orders the defendant to close each trade at such a point as will leave unexhausted sufficient of the margins which it has charged against the correspondent to cover the correspondent's commissions of $1.25 per 1,000 bushels of grain and $2.50 per ten shares of stock. (Trans. of Rec., pp. 70, 84, 91, 93, 129, 136, 179, 183-184, 190-193.) This leaves a credit for those amounts to the correspondent on each transaction. As against him is entered the defendant's charge for wire service, of 50 cents per ten shares of stock, so that in fact the net amount ultimately realized by the correspondent is $1.25 per 1,000 bushels of grain, and $2 per ten shares of stock. But as above stated, the correspondents Battle & Dickes do not trade in grain.

"XIII."

"* * * In this case the evidence shows a formal contract between the corporation and the alleged agent to the effect that the parties shall deal as principals and that the relation of principal and agent shall neither exist or be held out to exist. (Trans. of Rec., 156, 158 and 196, *et seq.*) There is, moreover, no evidence

that the correspondents Babb or Battle & Dickes have ever claimed or represented themselves to be agents of the defendant.

"XIV."

"If, therefore, such agency does exist in the present case, it must be as a matter of law, and contrary to the expressed intention and contract of the parties * * *

"XV."

"* * * The customer knows that the correspondent is not selling stocks to him or buying stocks from him, but is merely taking his order for transmission. Hence the correspondent's charge to the customer for his services is properly called a commission. The customer does not direct the correspondent from whom he is to purchase, or to whom he is to sell, and the latter is at liberty to purchase from or sell to the defendant, or elsewhere, as he chooses. In point of fact, perhaps because of the facilities offered by the private wire, he almost invariably does purchase from or sell to the defendant.

"But the defendant knows nothing of the customer. All its orders come from the correspondent in his own name. All funds received by it are sent to it, through the bank, by the correspondent. All its charges are made against, and all its credits entered in favor of the correspondent. Indeed, so far as the evidence shows, there is no ground for claiming that the defendant knows that the correspondent has any customers, or that he is not dealing solely on his own account. * * * (Trans. of Rec., pp. 52, 53.)

"XVII."

"* * * The correspondent has no authority to bind the defendant, or make trades for it.

"He cannot accept a customer's order for the defendant, but must send it over the wire as an offer to buy or sell. (Trans. of Rec., pp. 67, 68, 72, 73, 83, 84,

122.) Sometimes the defendant refuses to accept it. If it does accept it, the correspondent is so informed by wire, and communicates the fact to the customer. Complainant's counsel argues from this that the trade is made in Illinois, but the contrary appears to the Master to be the fact. The offer is made at Hammond; it is accepted or refused at Hammond; if accepted, the margin required is charged up at Hammond against the correspondent; the profits or losses are made and figured at Hammond; the defendant's charge for wire service is made and entered at Hammond; and the daily statement is made at Hammond and forwarded by mail to the correspondent. If it shows a balance in his favor it is accompanied by a check which is drawn at Hammond, usually on the local bank in the correspondent's city. If it shows a balance against him, he deposits the amount due in the same local bank to the defendant's credit, or to the credit of the Hammond bank. But in doing this he is not acting as the defendant's agent, but merely on his own behalf, paying his own indebtedness through the channel selected by the creditor. * * *

"XVIII."

"* * * The statement in the wire leases that the wires run from one office of the defendant to another office of the defendant, * * * is a mere printed form prepared and used by the telegraph company, and not such a paper as can properly be considered an admission on behalf of the defendant of which the complainant can take advantage." (Trans. of Rec., p. 214) Moreover these leases were never offered in evidence. (Trans. of Rec., p. 187, *et seq.*)

II. BRIEF OF ARGUMENT.

(1) THE ORDER OF FEBRUARY 23, 1904, DISMISSING THE BILL AS TO THE WESTERN UNION TELEGRAPH COMPANY WITHOUT PREJUDICE IS NOT SUCH A FINAL ORDER AS TO BE REVIEWABLE UPON APPEAL BY THIS COURT.

Davis v. *Geisler*, 162 U. S., 290; 40 L. Ed., 972.
Fowler v. *Hamill*, 139, U. S., 549; 35 L. Ed., 266.

(2) THE APPEAL FROM THE ORDER OF FEBRUARY 23, 1904, DISMISSING THE BILL AS TO THE WESTERN UNION TELEGRAPH COMPANY, WHEN THE APPELLEE, HAMMOND ELEVATOR COMPANY, WAS OUT OF COURT, DOES NOT IN ANY WAY INVOLVE OR AUTHORIZE A REVIEW BY THIS COURT OF THE ORDER OF FEBRUARY 23, 1904, DISMISSING THE BILL AS TO APPELLEE, HAMMOND ELEVATOR COMPANY, AND THIS NOTWITHSTANDING THE CERTIFICATE OF THE TRIAL JUDGE.

(3) IN THE ABSENCE OF ANY SHOWING IN THE RECORD OTHER THAN THE STATEMENT OF COMPLAINANT IN OPEN COURT RECITED IN THE ORDER OF DISMISSAL OF THE BILL AS TO THE HAMMOND ELEVATOR COMPANY, THE ORDER OF DECEMBER 21, 1903, WAS A VOLUNTARY NON-SUIT AND IS NOT REVIEWABLE UPON APPEAL.

(4) UNDER THE LAW AND THE EVIDENCE THE COURT PROPERLY ADJUDGED THE SERVICE OF SUBPOENAS HEREIN INSUFFICIENT TO

CONFER JURISDICTION OF APPELLEE, THE HAMMOND ELEVATOR COMPANY, AND THEREFORE GRANTED APPELLEE, HAMMOND ELEVATOR COMPANY'S, MOTION TO QUASH SERVICE OF PROCESS HEREIN.

ILLINOIS STATUTES.

"Foreign corporations, and the officers and agents thereof, doing business in this State, shall be subjected to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers." * * *

Hurd's Rev. Statutes of Ill., 1903, Chap. 32, p. 475, Sec. 26; in force July 1, 1872.

"An incorporated company may be served with process by leaving a copy thereof with its president if he can be found in the county in which the suit is brought, if he shall not be found in the county, then by leaving a copy of the process with any clerk, secretary, superintendent, general agent, cashier, principal, director, engineer, conductor, station agent or any agent of said company found in the county,* and in case the proper officer shall make return upon such process that he cannot in his county find any clerk, secretary, superintendent, general agent, cashier, principal, director, engineer, conductor, station agent or any other agent of said company, then such company may be notified by publication and mail in like manner and with like effect, as is provided in Sections 12 and 13 of an Act entitled 'An Act to regulate the practice in courts of chancery,' approved March 15, 1872."

Hurd's R. S. of Ill., 1903, Chapter 110, Sec. 5, p. 1400; in force Mar. 15, 1872, and as amended in force July 1, 1877.

"Section 4 of Act of 1845 provided for service on president, principal, clerk, cashier or secretary, at his office (with a proviso saving special modes provided by special acts, for suing corporations). It reads, 'executed on the president thereof, or served by leaving a copy of summons with,' etc.

"L. 1853, p. 258, Section 1, February 8, extends list of such officers to include any clerk, engineer, conductor or agent, and omitted the proviso saving special methods of service.

"Section 4 of Act of 1872 was identical with portion of text preceding asterisk (*).

"L. 1877, p. 146, May 29, July 1, adds portion after asterisk (*)."

Vol. 3, Starr & Curtis' Annotated Ill. Statutes, Chap. 110, Sec. 5, p. 2986.

"Every corporation for pecuniary profit formed in any other State, territory or country, before it shall be authorized or permitted to transact business in this State, or to continue business therein, if already established, shall designate some person as its agent or representative in this State on whom service of legal process may be had if desired." * * *

Hurd's R. S. of Ill., 1903, Chap. 32, Sec. 67 B, p. 486; in force July 1, 1897, and as amended July 1, 1899.

"* * * Such corporation, by its president, secretary or any officer thereof, shall make and forward to the Secretary of State, * * * a statement duly sworn to, * * * and such statement shall further show the name and address of the agent or representative of said corporation in this State." * * *

Id., Sec. 67 C, pp. 486-487.

Mineral Point R. R. Co. v. *Keep*, 22 Ill., 16.

Chicago & Rock Island Ry. Co. v. *Fell*, 22 Ill., 337.

Peoria Insurance Company v. *Warner*, 28 Ill., 433.

Union Pacific Ry. Co. v. *Miller*, 87 Ill., 45.

Midland Ry. Co. v. *McDermid*, 91 Ill., 170.

Hannibal & St. Joe R. R. Co. v. *Crane*, 102 Ill., 349.

Italian-Swiss Ag. Colony Co. v. *Pease*, 194 Ill., 98, at p. 106.

March-Davis Cycle Mfg. Co. v. *Strowbridge Lith. Co.*, 79 Ill. App., 683.

Havens & Geddes Co. v. *Diamond et al.*, 93 Ill. App., 557.

Note also as involving the Ill. Stats.:

Wall v. *Chesapeake C. & O. R. R. Co.*, 95 Fed., 398.

And as involving similar statutes:

Blake v. *R. R. Co.*, 21 Fed., 529.

(A) Under the averments, if true, of the motion to quash, the Circuit Court had no jurisdiction of appellee, Hammond Elevator Company, by virtue of the alleged service of process.

Federal Courts in common law actions follow the statutes in respective states in regard to service on corporations by the force of statute providing for conformity with the state practice in actions at law.

2 Foster's Fed. Prac., 3rd Ed., pp. 806, 810, 811.

The practice in equity cases is not dictated by statute, but

in such cases the state practice merely furnishes a code which the Federal courts are apt to follow.

1 Foster's Fed. Prac., 3rd Ed., p. 254.

The state statute must be reasonable and the service provided for be only upon such agents as may properly be deemed representatives of the foreign corporations.

Id., pp. 255, 256, *et seq.*

St. Louis Wire Mill Co. v. *Consolidated Barb Wire Co.*, 32 Fed., 802.

Good Hope Co. v. *Railway Barbed Fencing Co.*, 22 Fed., 635.

Goldey v. *Morning News*, 156 U. S., 518; 39 L. Ed., 517.

D'Arcey v. *Ketchum*, 11 How., 165; 13 L. Ed., 648.

Three conditions must occur. First, the corporation must be carrying on its business in such foreign state or district. Second, such business must be transacted or managed by some agent or officer appointed by and representing the corporation in such state. Third, there must be some local law making such corporation amenable to suit there as a condition expressed or implied of doing business in the state.

1 Foster's Fed. Prac., 3rd Ed., pp. 257 and 258.

U. S. v. *American Bell Telephone Co.*, 28 Fed., 17-35.

Midland Ry. Co. v. *McDermid*, 91 Ill., 173.

And for general discussion of principles involved see

St. Clair v. *Cox*, 106 U. S., 350, 22 L. Ed., 222.

(B) The averments of the motion to quash are, under the evidence, true. The transactions shown by the evidence do not show a doing of business by the Hammond Elevator Company within the state of Illinois or said

district, and the relations between Battle & Dickes and Babb and the Hammond Elevator Company do not amount, in law, to such an agency as is contemplated by law for the service of process upon a non-resident foreign corporation.

St. Clair v. *Cox*, 106 U. S., 350; 22 L. Ed., 222.

Goodhope v. *Railway Barbed Fencing Co.*, 22 Fed., 635.

U. S. v. *American Bell Telephone Co.*, 29 Fed., 17, at p. 40.

St. Louis Wire Mill Co. v. *Consolidated Barbed Wire Co.*, 32 Fed., 802.

Maxwell v. *A. T. & S. F. R. Co.*, 34 Fed., 286.

N. K. Fairbanks Co. v. *Cincinnati, N. O. & T. R. Ry. Co.*, 54 Fed., 420.

Evansville Courier v. *United Press*, 74 Fed., 918.

Wall v. *C. & O. R. R. Co.*, 95 Fed., 398.

Doe v. *Springfield Boiler & Mfg. Co.*, 104 Fed., 684.

Municipal Telegraph & Stock Co. v. *Ward*, 133 Fed., 70.

(C) The ultimate findings of the Master from the evidentiary facts.

Municipal Telegraph & Stock Co. v. *Ward, Collector*, 133 Fed., 70, at p. 72.

III. ARGUMENT.

(4A) It will hardly be contended that, under the averments, if true, of the motion to quash, the Circuit Court had any jurisdiction of appellee, the Hammond Elevator Company, by virtue of the alleged service of process upon it.

It must be further conceded by counsel for appellant that the state statute must be reasonable, and the service provided for be only upon such agents as may properly be deemed representatives of the foreign corporation. It is in this connection, however, that we have directed the attention of the court to the statutory provisions of Illinois touching the service of process upon foreign corporations, and we shall, therefore, here review briefly the history of the statutory enactments in the State of Illinois on this subject.

The liability of a foreign corporation to service of process in a state other than the state of its domicile, arises solely out of statutory enactments defining the terms upon which a foreign corporation may do business within a given state, and is based upon the theory that, given the statutory provisions, the foreign corporation, by transacting business within the state, impliedly consents to subject itself to the jurisdiction of the state by service of process upon its local representatives.

Prior to 1897, the only statutory provision in the State of Illinois as to the terms upon which a foreign corporation could do business in the state, was the statute providing that the foreign corporation, its officers and agents, doing business in the State of Illinois, should be subject to all the liabilities, restrictions and duties which are and may be imposed upon domestic corporations.

Section 26, page 475, Chapter 32, Hurd's Revised Statutes of Illinois, 1903.

This statute is still in force, but, in addition to it, the statute of 1897 provides for the appointment of an agent by the foreign corporation on whom service of process may be had.

Hurd's Revised Statutes of Illinois, Section 67b, 67c, page 486, Chapter 32.

The statute of 1897 contained a proviso that the act should not apply to drummers, soliciting agents, etc., of foreign corporations. As amended in 1899, the statute did not contain this proviso. It has been held, however, that the omission of this proviso in the act of 1899 has no effect upon the meaning of the statute, but that, on the contrary, it is to be presumed that the legislature omitted the proviso because unnecessary.

Havens & Geddes Co. v. *Diamond*, 93 Ill. App., 557, at p. 568.

March-Davis Cycle Mfg. Co. v. *Strobridge Lith. Co.*, 79 Ill. App., 683.

Under all of these statutes, that of 1872, that of 1897 and that of 1899, it is necessary, in order to determine the liability of a foreign corporation to suit in Illinois by service of process upon a local representative, to turn to the Illinois statute fixing the liability of domestic corporations to suits upon such service. The foreign corporation doing business in the State of Illinois will be subject to suit in Illinois upon service upon it in accordance with the provisions of the statute as to service upon domestic corporations in so far, and only in so far, as the statutory provision for service upon a domestic corporation is reasonable, when applied to foreign corporations; that is, when the statute, in its application to foreign corporations and their representatives, is justifiable and fair, under the principles of law and justice upon which a foreign corporation may be

subjected to suit in a state other than the state of its domicil.

The earliest statutory enactment in Illinois providing for service of process upon a domestic corporation was the Act of 1845, which provided for service upon the president, clerk, cashier or secretary, at his office.

Starr & Curtis's Annotated Statutes of Illinois, 1896, Vol. 3, Chap. 110, page 2986, Section 55, notes.

By later statute, in 1853, provision was made for service upon the president, if he resided in the county, or if absent, by leaving a copy of process with any clerk, secretary, cashier, engineer, conductor, or any agent of the company found in the county.

Starr & Curtis's Annotated Statutes of Illinois, Vol. 3, Chap. 110, Section 5, page 2986, notes.

It is to be noted that, as to the clerk, the provisions of the statute of 1853 say, "any clerk"; as to the agent, "any agent." The language of the statute may be definitely referred to in the case of *Peoria Ins. Co.* v. *Warner*, 28 Ill., 429, where it is set out.

Subsequently the statutes of 1872 and 1877 were enacted. The statute of 1877 is identical with that of 1872, except that the former provides for service by advertising, so the two statutes will be considered together.

These statutes, that is, the statutes of 1872 and 1877, provide for service of process upon any clerk, secretary, superintendent, general agent, cashier, principal, director, engineer, conductor, station agent, or any agent.

The elementary rule of statutory construction, that general terms following specific terms will be limited by the specific terms, requires no citation of authorities. The pro-

vision of the statute of 1877, which is the statute now obtaining, for service upon any clerk, is inherited from the statute of 1845, providing for service upon officials at the office of the corporation, and clearly contemplates a clerk in charge of such office. It certainly meant something different from an agent, and, in any event, is clearly inapplicable, under the facts, to the service the legality of which is here in dispute. The term "or any agent," if the amendment to the statute of 1853, inserting the term "general agent," is to be given any effect whatever, must mean any agent of the same general class as the secretary, superintendent, general agent, cashier, principal, or director. If the term "general agent" does not restrict the meaning of the term, "any agent," then the amendment to the statute by the Acts of 1872 and 1877 are of no effect whatever.

In dwelling upon the statutory provisions of Illinois and the proper interpretation to be given those provisions, we in no way recede from our position taken in the brief above and mentioned later in the argument, that the Federal courts will enforce a local statute, in so far as the local statute contemplates service of process upon a foreign corporation, only when such corporation is carrying on its business in the state by and through some agent or officer appointed by and representing the corporation.

(4B) The averments of the motion to quash are, under the evidence true; the transactions shown by the evidence do not show a doing of business by the Hammond Elevator Company within the State of Illinois or said district, and the relation between Battle & Dickes and Babb and the Hammond Elevator Company do not amount, in law, to such an agency as is contemplated by law for the service of process upon a non-resident foreign corporation.

As pointed out in the opening statement, *supra*, it appears

on the face of the bill that the Hammond Elevator Company is a corporation organized under the laws of the State of Delaware, and a citizen of the State of Delaware. The only other statement contained in the bill of complaint as to the residence, citizenship, or place of business of appellee, the Hammond Elevator Company, is the allegation that the Hammond Elevator Company is receiving quotations of the Chicago Board of Trade within and without said district. Notwithstanding the fact that, in the proceedings before the Master, upon the reference of the motion to quash, the evidence in support of the motion to quash was first introduced, the case was disposed of by the Master without any mention or discussion of the question of burden of proof, and we insist that, in a proceeding involving the jurisdiction of the court, especially in the absence of any allegations in the bill of complaint upon which to base the service of process within the Northern District of Illinois, it is for the appellant to establish, from the evidence, the jurisdictional facts in support of the alleged service of process. In fact, however, the evidence affirmatively shows the absence of the jurisdictional facts.

The Master, in his report, states that "each party to this case accuses the other of being a 'bucket shop,'" and further states, that it appears to the Master to be utterly immaterial whether either or both are gambling concerns or corporations engaged in legitimate business. Preparing our brief for this Honorable Court, in large part, in advance, and before seeing the brief for appellant, we can anticipate appellant's argument only from the argument made on behalf of the Board of Trade before the Master, and before the trial court. We may err in our anticipation as to the line of argument of counsel for appellant in this court, but feel that the statement by the Master as to these mutual accusations warrants

an explanation on our part, especially as, in event of counsel's following the same line of argument that he did below, his charge against appellee, the Hammond Elevator Company, is the basis of and characterizes his entire line of argument.

Counsel's first step was, and we believe will be here, to condemn appellee, the Hammond Elevator Company, as one of a class of concerns which he dubs "bucket shops"; to then refer to reports, wherever he can find a report, holding that a concern was engaged in a gambling or bucket shop transaction, and draw an analogy between such concerns and this defendant company, on the assumption that appellee is, as he declares, a bucket shop.

The next step, still upon the assumption that appellee, the Hammond Elevator Company, is a bucket shop, is that, being a bucket shop, the plain terms of its relations with Babb and Battle & Dickes are to be disregarded, and the court is to determine what the relations of appellee, the Hammond Elevator Company, Battle & Dickes and Babb are, on the assumption that they are not what they purport to be. We apprehend that this court will not arbitrarily disregard the express contractual relations of the Hammond Elevator Company and Battle & Dickes and Babb, and indulge in speculation upon that assumption as to what the actual relations of the parties are. In the absence of some well founded reason to the contrary, this court is precluded from implying the existence of relations between the parties other than and contrary to the express terms of their agreements. On the other hand, we do not contend that, merely because the Hammond Elevator Company announces that it has no agents, it follows conclusively that they have none, or that they have not been doing business in Illinois through resident agents; but counsel for appellant would have the

court find that, because the Hammond Elevator Company announces that it has no agents, every one is its agent.

The relationship between the parties, to which Babb and Battle & Dickes testified, and which the Master finds is the actual relationship between these so-called correspondents and appellee, the Hammond Elevator Company, namely, that Babb, for instance, takes an order from a customer to buy or sell a particular product, and thereupon buys or sells, or endeavors to buy or sell, this product for his customer, from or to the Hammond Elevator Company, is not a legally impossible relationship. It is a perfectly conceivable legal transaction. There is nothing legally inconceivable or improper in the Hammond Elevator Company's charging Babb, aside from or beyond the market price on the commodity, for the use of the wire furnished by the Hammond Elevator Company, on the basis of the amount of business which Babb does over that wire. If, as counsel contend, Babb is the agent of the defendant company, what difference in the relations of the parties from those shown by the evidence in this case, would there be if Babb were not the agent of the defendant company? If the parties, desiring to do business with each other in the manner in which the evidence shows they do do business, wish to do so without creating Babb the agent of the Hammond Elevator Company, how then shall they do so? If they have not, by their contract and dealings, as shown by the evidence, arrived at this, their avowed desideratum, how can they? The transaction of business, as these parties had transacted business, without creating Babb or Battle & Dickes the agents of the defendant company is perfectly feasible in law. The parties desired to transact this business in this way without creating Babb and Battle & Dickes the agents of the Hammond Elevator Company. In what manner, or for what reason, have they failed to accomplish their design?

Counsel for appellant will admit that the actual relationship between these parties, as disclosed by their testimony and the provisions on the back of each printed statement, is a relationship to which the parties are endeavoring, with all their legal strength and acumen, to attain. If appellee, the Hammond Elevator Company, wishes to enter into an agreement with Mr. Babb, by which they induce Babb to give them business, by putting in a wire, for which the Hammond Elevator Company pays and upon which they take the risk, demanding of Babb only that he pay as his business warrants and leaving Babb free to place his business where he sees fit, the defendant company counting merely on the probability that Babb will place the great majority of his trades with them, as a mere matter of convenience, under which agreement the defendant does not make Babb its agent and gives him no authority to represent them or act for them, will such an agreement, notwithstanding the intention of the parties, make Babb the agent of the Hammond Elevator Company? Counsel does not contend, certainly in no way shows to the court, that the parties have any subtle reason for making Babb their agent, yet he argues, in effect, that it is legally impossible to transact this business in the way it is being transacted without making Babb the agent. If, from this record, it could in any way be shown why the defendant company should want Babb to be their agent, and that they were seeking, in effect to make him their agent, but not to make him their agent in law, then the court might consider putting aside the express agreement between the parties and all the precautions taken by them against such a conclusion, and finding that Babb is, in fact, the agent of the defendant company, and that the method of doing business between the parties is a mere subterfuge.

Counsel endeavors to meet the incontrovertible fact that these correspondents, if they failed to collect moneys from their customers and the trade results in a loss, must stand the loss, by the assertion that the relation is that of a *del credere* agent, but there is absolutely no evidence to support this contention; and, in the absence of any agreement making the correspondent an agent, the court will not say that the agreement, on its face not one of agency, is one of agency because it might be.

As already stated, we believe that the burden is upon appellant to show jurisdictional facts affirmatively. On the other hand, we believe that the evidence shows affirmatively that the jurisdictional facts did not exist and that the averments on the motion to quash are true. Considering the question, however, from the point of view of the jurisdictional requirements, and independently of the motion to quash, we have called the attention of the court to a number of cases in which the rules of law are applied to various facts appearing in the several cases.

In the case of *St. Clair* v. *Cox,* suit was brought by the plaintiff upon two promissory notes. On the trial, evidence was given by the defendants intending to show that the plaintiff was not a *bona fide* holder of the notes for value, and then a certified copy of a judgment against the payee of the notes, recovered by the defendant in the Circuit Court of Marquette County, Michigan, was offered but excluded on the ground that it did not appear that the Michigan court had obtained jurisdiction of the parties. The judgment in the Circuit Court in Michigan was rendered in an action commenced by attachment. No question was raised as to the validity of the judgment to the extent of the property attached, but it was objected to as evidence that the amount rendered was an existing obligation on or against the com-

pany. The officer serving the writ of attachment returned it, "also served a copy of the writ, etc., on the defendant by delivering the same to Henry J. Colwell, agent of the said Winthrop Mining Company in said county." The Michigan statute provided that in suits commenced by attachment against a foreign corporation, "if a copy of the attachment and of the inventory of the property attached should have been personally served on any officer, principal, clerk or agent of said corporation within the state," personal judgment might be had thereon. The court says in part:

> "It is sufficient to observe that we are of the opinion that, when service is made within the state upon an agent of a foreign corporation, it is essential, in order to support the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record, either in the application for the writ or accompanying its service, or in the pleadings or findings of the court, that the corporation was engaged in business in the state. The transaction of business by the corporation in the state shown, a certificate of service by the proper officer on the person who is its agent there would be sufficient *prima facie* evidence that the agent represented the company in the business. * * * In the record, a copy of which was offered in evidence in this case, there was nothing to show, so far as we can see, that the Winthrop Mining Company was engaged in business in the state when service was made on Colwell. The return of the officer, on which alone reliance was placed to sustain the jurisdiction of the state court, gave no information on the subject. It did not, therefore, appear, even *prima facie,* that Colwell stood in any such representative character to the company as would justify the service of a copy of the writ on him. The certificate of the sheriff, in the absence of this fact in the record, was insufficient to give the court jurisdiction to render a personal judgment against the foreign corporation. The record was, therefore, properly excluded."

In its opinion in this case, the court, by Mr. Justice Field, discusses at length the history and principles of the doctrine of service of process upon foreign corporations by their local representatives.

St. Clair v. *Cox*, 106 U. S., 350; 27 L. Ed., 222.

In *Goodhope Co.* v. *Railway Barbed Fencing Co.*, the Federal court refused to follow a state statute, on the ground that the state statute was contrary to national justice and the principles of international law, and refused to sustain service upon the president of the defendant company while in the district upon the business of the defendant corporation on the ground that the corporation had never been practically engaged in business within the state, but had only made purchases there which it could have made by correspondence as well as by the presence of its agents.

Goodhope Co. v. *Railway Barbed Fencing Co.*, 22 Fed., 635.

In *St. Louis Wire Mill Co.* v. *Consolidated Barbed Wire Co.*, the court refused to sustain service on the general manager of a Kansas corporation accustomed to purchase raw material either by correspondence or by sending an agent to St. Louis, the general manager having been served while in St. Louis on a pleasure trip. This, although, under the Missouri statute, the service would be sufficient.

St. Louis Wire Mill Co. v. *Consolidated Barbed Wire Co.*, 32 Fed., 802.

A person authorized to solicit passengers for a railway company, but having no authority to sell tickets, even though employed to effect a settlement of the plaintiff's claim, and although he, to that end, made an offer of compromise, is not such an agent that process against his principal can be served upon him.

Maxwell v. *A. T. & S. R. R. Co.*, 34 Fed., 286.

N. K. Fairbanks Co. v. Cincinnati, N. O. & T. R. Ry. Co., 54 Fed., 420.
Wall v. C. & O. R. R. Co., 95 Fed., 398.

In the case of *Evansville Courier Co. v. United Press*, a bill was filed in Indiana against a New York corporation to enjoin it from withholding certain telegraphic news service. The subpoena was served upon the superintendent of the Western Union Telegraph Company, as the agent of the defendant, and upon one Fisher, as agent of the defendant. The defendant company's principal place of business was in New York. It had no office in the State of Indiana, unless it was the local office of the Western Union Telegraph Company, and its only relation with the manager of the Western Union Telegraph Company was that the defendant had leased one or more telegraph wires from the telegraph company for the transmission of news, and the manager of the telegraph company, as such, was charged with the duty of keeping these wires in repair and of seeing that the terms of the contract of lease were mutually performed by the parties. Fisher was an employe of a publishing house in Indianapolis. As to his relations to the defendant, it was his business to look out for news items of general interest in Indianapolis and throughout the state, and if he obtained any of sufficient importance, he sent it over the United Press wire to Chicago, for that purpose delivering his matter to the operator in the office of the telegraph company, by which operator it was put upon the wire of the United Press Company. For such news as Fisher furnished he received three-sevenths of a cent a word. He was free to sell his news to anybody who would buy it. As to Fisher the court says in part:

"No contract existed creating the relation of principal and agent, binding him on the one side to furnish

and the defendant on the other to receive news items. Whether he sent any news items or not was a matter of choice and not of mutual obligation."

The court refused to sustain the service of process on the ground that the defendant company was not doing business within the district, and that the parties served were, neither of them, such agents of the defendant company as that service upon them was service upon the defendant.

Evansville Courier Co. v. *United Press,* 74 Fed., 918.

An agency relation arising merely as a legal result from the facts, although contrary to the avowed intention of the parties, does not create such an agent that the corporation can be held by service upon such agent. In other words, a constructive agency does not create such an agent.

U. S. v. *American Bell Telephone Co.,* 29 Fed., 17, at p. 40.

Doe v. *Springfield Boiler & Mfg. Co.,* 104 Fed., 684.

(4C) The ultimate findings of the Master from the evidentiary facts.

Although not involving the question of service of process upon a foreign corporation, we have cited the court, in this connection to the case of *Municipal Telegraph & Stock Co.* v. *Ward, Collector.* That case involved the liability of the plaintiff, the Municipal Telegraph & Stock Company, to taxation on certain memoranda under Sub-division 3, of Schedule A, of the War Revenue Act of July 13, 1898, as amended by Act of March 2, 1901. The plaintiff was engaged in business as a stock broker, conducting transactions in the purchase and sale of stocks, to be settled with reference to the public market quotations of prices.

"Its business of this character was transacted with numerous brokers who were engaged in business similar to that of the plaintiff, or in conducting bucket shops located in various parts of the country, called 'correspondents,' and the course of the business appears to have been this: Upon the order of one of these correspondents by telegram to buy or sell a specified security if the market quotations warranted the execution of the order, the plaintiff would notify him by telegram that it had bought or sold, as ordered; and on the same day would send him a memorandum such as the statute requires of this and all other purchases or sales made in execution of his orders during the day, and a statement of his debit and credit items in account. When the credit items exceeded the debit items, the plaintiff would send a check to the correspondent for the balance. If the debit items exceeded the credit items, the correspondent would be expected to deposit the balance on the next morning in a designated local bank to the credit of the plaintiff. Each transaction between the plaintiff and the correspondent was identified by a number assigned to it in the consecutive order of the dealings, and this was transcribed in the books of both. These correspondents were at the same time dealing with customers who desired to engage with them in similar contracts or transactions, and their orders to the plaintiff generally represented orders from their own customers to buy or sell securities. Upon receiving notice from the plaintiff that a given order had been filled, the correspondent would notify the customer, and, if the customer had paid to him the required 'margin,' would deliver to him a memorandum such as the statute requires. He would also number this memorandum with the number which had been assigned to the transaction between himself and the plaintiff. The memorandum evidenced a transaction between the correspondent and the customer only. The customer was not named or known in the transaction between the correspondent and the plaintiff; and the memorandum delivered by the plaintiff to the correspondent evidenced

a contract between them only. The commissions charged by the correspondents to their customers were a quarter of 1 per cent on the par value of the securities covered by the contracts or transactions. The commissions charged by the plaintiff to the correspondents were one-half of that amount. The correspondents placed on the memorandums delivered to their customers the stamps required by sub-division 3, and cancelled the stamps. The plaintiff did not stamp the memorandums of sales or purchases sent to its correspondents.

"The tax in controversy was assessed by the defendant upon the transactions between the plaintiff and the correspondents which took place between July 24, 1901, and July 1, 1902. The plaintiff insists that the tax was paid by the stamps affixed by the correspondents upon the memorandums delivered by them to their customers. If this contention is correct, the plaintiff is entitled to recover; otherwise it has no cause of action. If the correspondents were agents of the plaintiff and of their customers, so that in each contract or transaction the plaintiff and the customers were the real principals, it is plain that the contract or transaction is subject to buy one tax. It would be in law a single contract or transaction between the plaintiff and the customer, the correspondent being a mere intermediary, and not a dual one between the plaintiff and its correspondent on the one hand and the correspondent and its customer on the other. The evidence does not warrant this view of the relations between the correspondents, their customers, and the plaintiff. It indicates that the correspondents were principals in their transactions with their customers upon the one hand and with the plaintiff upon the other; that the plaintiff dealt with them as principals, and neither knew nor cared to know any third party in their transactions with them; and that the plaintiff relied exclusively upon the responsibility of the correspondents in its dealings with them, although it was aware of their relations with customers. In a limited sense the correspondents were

agents for the customers, because they were expected to excute orders to enter into contracts of purchase and sale given to them by the customers. In no sense were the correspondents agents of the plaintiff. They stood in no fiduciary relation to the plaintiff. They had no duties to perform for the plaintiff. They were not employed or paid by the plaintiff, their relations were none other than that of principal dealing with principal. When they made a contract to buy or sell with the plaintiff, they were at liberty to treat the contract as their own, and the plaintiff understood that they were at liberty to do so. In paying the tax by stamping the memorandums delivered to their customers the correspondents were merely paying their own tax upon their own tranactions. The facts materially distinguished the case from that in *United States* v. *Clawson* (D. C.), 119 Fed., 994, which is relied upon by the plaintiff.

"The conclusion is that the transactions between the correspondents and the plaintiff were distinct and independent transactions, upon which the plaintiff was required by the statute to pay the tax.

"Judgment is accordingly ordered for the plaintiff."

Municipal Telegraph & Stock Co. v. *Ward, Collector,* 133 Fed., 70, at pp. 71-73.

There is an express contract, or custom of doing business based upon an express understanding between Babb and the Hammond Elevator Company, by which any implication or assumption of agency is expressly provided against, under which Babb and Battle & Dickes have no authority to enter into any binding contract for or on behalf of the Hammond Elevator Company, and under which a course of business is pursued between Babb and Battle & Dickes and the Hammond Elevator Company which is in no particular inconsistent with a relation other than agency. The question before the Master, the question before the trial court, the question before this court, is whether there is affirmative

evidence in this record from which the court can find that the express agreement, the undisputed course of business between these parties, is not evidence of their actual relations, but that they have a secret agreement by which Babb and Battle & Dickes have authority to do something that they never do do and which makes them agents of the defendant company upon whom service of process against the Hammond Elevator Company may be had.

Respectfully submitted.

JACOB J. KERN,
JOHN A. BROWN,
LLOYD CHAS. WHITMAN,
Counsel for Appellee, Hammond Elevator Co.

Supreme Court of the United States.

No. 215.—October Term, 1904.

Board of Trade of City of Chicago, Appellant, vs. Hammond Elevator Company and Western Union Telegraph Company.	Appeal from the Circuit Court of the United States for the Northern District of Illinois.

[May 29, 1905.]

This is an appeal directly to this Court from a decree of the Circuit Court dismissing for want of jurisdiction a bill filed by the Board of Trade of the City of Chicago, an Illinois corporation, against the Hammond Elevator Company, a Delaware corporation, and a citizen of that State.

The basis of the bill was that the appellant had a property right in the quotation of prices in transactions made within its exchange; that the defendant had entered into a conspiracy with others to steal, and was using such quotations, and prayed an injunction. A subpœna was issued in the usual form, requiring the Hammond Elevator Company to appear and answer the bill, and was afterwards returned by the marshal as served within the Northern District of Illinois by delivering a copy of the same "to Albert M. Babb, agent for the Hammond Elevator Company at Peoria," and also "by reading the same to and within the presence and hearing of John L. Dickes, a member of the firm of Battle & Dickes, agents of said company," as well as upon Battle. On the day following the service the Elevator Company entered a special appearance, and moved the Court to set aside the service of the subpœna by the marshal, on the ground that the return was untrue in fact and insufficient in law, and prayed judgment of the Court whether it should be compelled to appear or plead to the bill of complaint, because it had not been served with process, and because the defendant was not at the date of filing the bill, or at any other time, within the State of Illinois; that it is not a resident of such State, but is a Delaware corporation, and its principal place of business is outside the State of Illinois.

This motion of the Elevator Company was referred to a master to take testimony, and report the same with his conclusions of law. The master filed his report in the Circuit Court, recommending that the motion of the defendant to quash the service of process be sustained; whereupon counsel for plaintiff stated in open Court that he was unable to make any other or different service upon the defendant, and it was ordered that the bill be dismissed as to the Hammond Elevator Company. The bill was

also dismissed as to the Western Union Telegraph Company, which had been made a party by an amendment to the original bill. Thereupon appellant appealed to this Court upon the same question of jurisdiction, praying that the appeal be allowed and said question be certified, which was done.

Mr. Justice BROWN delivered the opinion of the Court.

The Circuit Court dismissed this appeal upon the ground that it had never acquired jurisdiction over the Hammond Elevator Company by the service of process upon Albert M. Babb and the members of the firm of Battle & Dickes, because they were not officers of the Elevator Company, which was a Delaware corporation, and had its principal place of business in the State of Indiana.

1. There is, however, a preliminary question in this Court, that is, whether we can lawfully entertain this appeal under section 5 of the Act of March 3, 1891, which provides that an appeal shall lie directly to this Court "in any case in which the jurisdiction of the Court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the Court below for decision."

The proper construction of this section has been the subject of frequent consideration in this Court, and it has been definitely settled that it must be limited to cases where the jurisdiction of the Federal Court, as a Federal Court, is put in issue, and that questions of jurisdiction applicable to the State Courts, as well as to the Federal Courts, are not within its scope.

The earliest reported case on this subject is that of the *World's Columbian Exposition*, (18 U. S. Appeals, 42,) in which the Circuit Court, sitting in equity, granted an injunction to prevent the opening of the Exposition grounds on Sunday. On appeal to the Circuit Court of Appeals the Chief Justice held that as the power of the Circuit Court to hear the cause was not denied, the appellant contending only that the United States had not made a case cognizable in a court of equity, the jurisdiction of the Circuit Court was not in issue within the intent and meaning of the act. In *Smith* v. *McKay*, (161 U. S. 355,) it was held, following the prior case, that the question whether the remedy was at law or in equity did not involve the jurisdiction of the Federal Court as such, and the case was dismissed. A similar ruling was made in *Blythe* v. *Hinckley*, (173 U. S. 501.)

The cases were fully reviewed in *Louisville Trust Company* v. *Knott*, (191 U. S. 225,) in which the question involved was the respective rights of a receiver appointed by the State Court and one appointed by the Circuit Court of the United States. It was held that the question was not one of jurisdiction within the meaning of the Act of March 3, 1891, the Court observing: "The question of jurisdiction which the statute permits

to be certified to this Court directly must be one involving the jurisdiction of the Circuit Court as a Federal Court, and not simply its general authority as a judicial tribunal to proceed in harmony with established rules of practice governing courts of concurrent jurisdiction as between each other."

In *Bache* v. *Hunt*, (193 U. S. 523,) Hunt, as receiver, filed an intervening petition for the reimbursement of certain amounts paid by him as receiver in the extinguishment of prior claims, which certain railroad bonds and stocks had been deposited to secure. A decree was made in his favor, and an appeal was taken to this Court. It was said that "the jurisdiction of the Circuit Court was only questioned in respect to its general authority as a judicial tribunal, and not in respect to its power as a Court of the United States. The established rules of practice as to bringing in parties to ancillary or *pro interesse suo* proceedings, and those governing courts of concurrent jurisdiction as between themselves, was alone involved." The appeal was dismissed.

In *Courtney* v. *Pradt*, (196 U. S. 89,) a citizen of Wisconsin, duly qualified as an executor in that State, was sued as such in Kentucky. Pradt demurred on the ground that the Court had no jurisdiction, and the Circuit Court of the United States, to which the case had been removed, sustained the demurrer and dismissed the suit. It was said that the Court had power to so adjudicate, and that the question decided was not one of the jurisdiction of the Circuit Court as a Court of the United States, but one with respect to the law of Kentucky. The case was dismissed.

There is a distinction, however, between these cases which turn upon questions arising *after* a valid service of process upon the defendant, with respect to the mode of procedure, or the conflicting claims of the State and Federal Courts, and certain other authorities which turn upon the validity of the service of process itself upon the defendants; in other words, which involve the jurisdiction of the Court in any form over the defendant. The leading case is that of *Shepherd* v. *Adams*, (168 U. S. 618.) This case turned upon the validity of the service of the summons whereby the defendant was required to appear within ten days after such service, when by the law of the State he was allowed thirty days. The question was whether R. S. Sec. 914, assimilating the practice, pleadings, forms and modes of proceedings in civil causes in the Federal Courts to those obtaining in the State Courts, applied to the time within which the defendant was required to appear in obedience to a summons. It was held that, as the rule of the Federal Court was adopted in conformity with the rules then in force in the State Courts, it was not bound to alter its rules every time the State Courts saw fit to alter their rules, and that the Federal Courts were at liberty to continue their rules without subservience to such

changes. The point was made that the question involved was not the jurisdiction of the Federal Court as such, and in reply to that suggestion Mr. Justice Shiras observed: "The present case differs from *Smith* v. *McKay*, in the essential feature that the contention is that the Court below never acquired jurisdiction at all over the defendant by a valid service of process. In such a case there would be an entire want of jurisdiction, and a judgment rendered without jurisdiction can be reviewed on a writ of error directly sued out to this Court."

That paragraph is doubtless broader than the exigency of the case required, as the question involved was the validity of the service of process in the Federal Court as distinguished from the State Court, but in the recent case of *Remington* v. *Central Pacific Ry. Co.*, *ante*, p. , it was accepted as applicable to the case of the validity of a summons from a State Court, served upon a director of a railroad company in a State other than that in which the company was incorporated. The Court denied a motion to set the service aside, whereupon the case was removed into the Circuit Court of the United States, and the defendant renewed its motion to set aside the summons. The motion was granted, and the action was dismissed for want of jurisdiction of the defendant. It was held, upon the authority of *Shepherd* v. *Adams*, that this Court had authority to review the judgment on writ of error.

While the case under consideration is distinguishable from *Shepherd* v. *Adams*, we think it is concluded by the case last cited, and therefore hold that we have jurisdiction to review the action of the Circuit Court in dismissing this bill.

2. The merits in the case are contained in the certificate of the District Judge, and involve the jurisdiction of the Circuit Court over the Hammond Elevator Company, by reason of the service in the State of Illinois upon Babb or Battle & Dickes, as agents of such company, and whether the service of process upon them gave the Court jurisdiction over the company.

By the law of Illinois, R. S. Chap. 32, Sec. 26, "foreign corporations, and the officers and agents thereof, *doing business in this State*, shall be subjected to all the liabilities" of domestic corporations; and by Chap. 110, Sec. 5, "may be served with process by leaving a copy thereof with . . . any agent of said company found in the county."

The facts showing the relations between the parties served and the Elevator Company are substantially as follows:

The company maintains a place of business at Hammond, Indiana, and had under lease from the Western Union Telegraph Company the exclusive use during business hours of certain telegraph wires running from Hammond to certain offices in different cities in Illinois, including Peoria

and Aurora, where the parties served with process lived. In the lease of these wires, signed by defendant, the offices of these "correspondents" are designated as offices of the defendant, and are contained upon regular printed forms prepared by the company. The cost or rental of these wires was paid to the Telegraph Company by the defendant. Over these wires the defendant caused to be transmitted continuous market quotations of the New York Stock Exchange to persons standing in relation of Babb and Battle & Dickes, who are called "correspondents," and who posted these quotations upon blackboards in their respective offices.

Customers resorting to the correspondents' offices, and desiring to trade in any one of the sixty different stocks whose quotations are posted, give a verbal or written order to buy or sell certain grain or stocks, which is transmitted by the correspondent in his own name over the private wire of the correspondent running into his office from the office of the defendant at Hammond, as an offer by the correspondent to buy from or sell to the defendant. Sometimes the price is mentioned by the customer, and sometimes not. In the latter case it is understood that the trade is to be at whatever the market is. When the order is given the correspondent exacts from the customer such margin as he sees fit, unless the customer already has money on deposit with the correspondent, or is of known financial responsibility. Defendant accepts these orders when the state of the market justifies, by return message over the same wire, the contents of which are communicated by the correspondent to the customer. The individuality of each trade is preserved throughout by a number given to it by the correspondent's operators at the outset. The correspondent upon receipt of this return message gives the trader a memorandum showing the trade and the price to which his margin carries it, and, except in case of a losing trade, where he has failed to protect himself by securing from the customer a sufficient margin, the correspondent neither participates in the loss nor the profit incurred in the trade. He derives as his compensation a fixed sum, whether the trade results in a profit to the defendant or to the customer. Through daily statements and daily settlements of the balance shown thereby, the correspondent remits to the defendant, through its local bank, whatever amounts are shown to be due from him to the defendant for margins, wire service, &c. When the trader wishes to close a trade thus opened the correspondent in like manner receives and transmits the order over his wire to the Hammond Company, giving to the telegram the number of the order already given to the trade. The order is executed at Hammond the same way as the opening order.

It is admitted by the defendant's counsel that the defendant does not desire to be subject to suit before the State and Federal Courts of every State and District where it has correspondents, and that it has endeavored to arrange and conduct its business so as to avoid such contingency.

The relations of the correspondent with the Elevator Company are in each case fixed by formal contract, to the effect that the parties shall deal as principals, and that the relations of principal and agent shall neither exist or be held to exist. There is no evidence that the correspondents Babb and Battle & Dickes have claimed or represented themselves to be agents of the defendants.

The fact, however, that the relation between the defendant and its correspondents are, as between themselves, expressly disclaimed to be those of principal and agent, is not decisive of their relations so far as third parties dealing with them upon the basis of their being agents are concerned. (*Mutual Life Insurance Company* v. *Spratley*, 172 U. S. 602.) As was said in this case, of the agents whose authority to receive service of process was denied by the defendants (p. 615): "In such case it is not material that the officers of the corporation deny that the agent was expressly given such power, or assert that it was withheld from him. The question turns upon the character of the agent, whether he is such that the law will imply the power and impute the authority to him, and if he be that kind of an agent, the implication will be made, notwithstanding a denial of authority on the part of the other officers of the corporation. . . . In the absence of any express authority the question depends upon a review of the surrounding facts and upon the inference that the court might properly draw from them." See also *Italian-Swiss Colony Company* v. *Pease*, (194 Ill. 98;) *Commercial Ins. Co.* v. *Ives*, (56 Ill. 402;) *Union Ins. Co.* v. *Cliff*, (93 Ill. 96;) *Ind. Ins. Co.* v. *Hastwell*, (123 Ind. 177;) *Planters' Ins. Co.* v. *Meyers*, (55 Miss. 479;) *Sprague* v. *Ins. Co.*, (69 N. Y. 128.)

In this connection it was found by the master that "There can be no question that towards the customer the correspondent bears the relation of agent to his principal. The customer knows that the correspondent is not selling the stocks to him, or buying stocks from him, but is merely taking his orders for transmission. Hence, the correspondent's charge to the customer for his services is properly called a commission. The customer does not direct the correspondent from whom he is to purchase, or to whom he is to sell, as the latter is at liberty to purchase from or sell to the defendant, or elsewhere, as he chooses. In point of fact, perhaps, because of the facilities offered by the private wire, he almost invariably does purchase from or sell to the defendant."

The defendant has undoubtedly taken great pains to foreclose the idea that its correspondents are agents in any such sense as to render it liable for their acts, or to validate the service of process upon them as such agents. Each day the defendant enters upon his statement which he that day sends to the correspondent each trade it has that day accepted from such correspondent. If the statement shows a debit balance, the correspondent deposits an approximate amount in a bank in his city

to the credit of the defendant, which thus maintains an active bank account in each of such banks. If the statement results in a balance to the credit of the correspondent, a check of the defendant payable to the correspondent, and usually drawn upon the same local bank, where the deposits are made to defendant's credit, accompanies the statement. As a general thing the balance due on each day's transactions, as between the defendant and the correspondent, is approximately settled the next day. The defendant looks only to the correspondent in all trades. In case of a loss, if the correspondent has failed to secure sufficient margin from the customer, and is unable to collect the amount from him, the correspondent must stand the loss. The defendant charges up and retains the amount of its charge for wire services, in any event, as well as all losses of the correspondent on trades. The daily statements by defendant are made upon printed blanks, which contain the statement: "We have no agents." And upon the back is a printed statement to the effect that upon consideration of the defendant consenting to deal and contract with him as principal in buying and selling commodities, he agrees:

"First. In all cases where I shall purchase from or contract to purchase from or shall sell to, or contract to sell to said Hammond Elevator Company any commodity, I will receive and pay for the commodity purchased, or contracted to be purchased from it, and will deliver the commodity sold, or contracted to be sold, to it."

"Seventh. That I am not, and will not, represent myself as being agent for said Hammond Elevator Company, but will represent that I have no authority to act for it. It is not responsible for anything that may be done by me."

"But the defendant knows nothing of the customer. All its orders come from the correspondent in his own name. All funds received by him are sent to it through the bank by the correspondent. All its statements are rendered to the correspondent. All its charges are made against, and all its credits entered in favor of, the correspondent. Indeed, so far as the evidence shows, there is no ground for claiming that the defendant knows that the correspondent has any customers, or that he is not dealing solely on his own account."

Notwithstanding these protestations and excessive precautions used to prevent the correspondent being held as agent, the method of business shows that the party really interested in the transaction is the defendant, and that the correspondents are compensated as if they were agents, and not principals. The correspondent charges his customers a commission of one-eighth of a cent a bushel on grain. The defendant keeps a regular book account with its correspondents, and in addition to charging up the margin against him, it makes an arbitrary charge on each deal, which is called on the statement of the correspondent "wire service," meaning a charge for the use of the private wire. This charge for wire service is a

regular fixed percentage of the commission charged by the correspondent, which indicates that it is a commission under the guise of wire service, and such a charge upon any transaction of magnitude would be an exorbitant charge for use of the wire. An ordinary charge for wire service would depend upon the length of the message and distance transmitted, wholly irrespective of the amount of the transaction. But in this case, when a charge is made on a transaction involving a hundred shares, the charge is ten times greater than for a trade involving ten shares. This indicates something more than a charge made for the actual use of the wire, the amount of the service being the same in each case. The significance of this wire service is the more marked by the fact of the defendant company paying a fixed sum of $50 per month for the use of the wire.

The findings, moreover, show that while the correspondent takes the orders from his customers, he transmits them directly to the defendant, and no trade is effected until the return message is received by the correspondent. While the identity of the customer is not disclosed to the Elevator Company, it is preserved by a number appropriate to each order; and there can be no doubt that any legal liability of the trader arising out of the transaction could be enforced by the defendant against the customer as soon as his identity was discovered. It is apparent from these transactions that the real trading is done between the customer and the Elevator Company, and that the functions of the correspondents are really those of agents and not of principals. There must be two principals, and only two, in every such transaction. Obviously the customer is one of them. We think it equally obvious that the Elevator Company is the other one, and that the profits appropriate to the transaction belong to the Elevator Company, and not to the correspondent, who is paid a commission for his services. If the correspondent be not the principal in this transaction, he must be the agent of one party or the other, and as his office is continuously open for the transaction of business, where he receives and executes orders, collects margins and deposits them to the credit of the defendant in a local bank, and apparently his transactions are entirely with the defendant, it would seem that he was rather the agent of the Elevator Company than of the customer, a conclusion which is fortified by the fact that the correspondent is compensated by a percentage of the amount charged the customer under the name of commission for the privilege of trading.

The real transaction in this case is undoubtedly artfully disguised, but notwithstanding the fact that the order is made and accepted at Hammond, and the margin is charged up at Hammond against the correspondent, and the profits or losses made there, we are of the opinion that in receiving, transmitting and reporting orders to the customers, receiving their margins, and settling with them for the profits or losses inci-

dent to each transaction, the correspondent is really "doing business" as the agent of the Elevator Company in Illinois, and may be properly treated as its agent for the service of process. It is evident that if these correspondents be not regarded as agents in these transactions, it is possible for the defendant to establish similar correspondents in a dozen cities in at least a dozen States of the Union, and an enormous business be built up, in which the defendant company is the real principal, with no possibility of being sued except in the States of Indiana and Delaware.

If these correspondents were admitted to be agents of the Elevator Company it is not perceived how their methods of doing business would be materially changed. They would maintain an office in their own cities; would receive and transmit to their principals offers for trades made to them and report their acceptance or refusal, as is frequently done with respect to policies by agents of insurance companies; would receive and deposit the margins and attend to the settlement of differences. In fact, their position is analogous to that of an ordinary insurance agent, with power to receive applications and premiums, deliver policies and settle losses, and whose acts are binding on the principal, notwithstanding a provision in the application for the policy declaring such party shall be the agent of the insured.

It results that the decree dismissing the bill as to the Hammond Elevator Company must be reversed, and the case be remanded for further proceedings.

The CHIEF JUSTICE, Mr. Justice HARLAN and Mr. Justice DAY dissented upon the first point.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 215.—October Term, 1904.

Board of Trade of City of Chicago, Appellant, vs. Hammond Elevator Company and Western Union Telegraph Company. } Appeal from the Circuit Court of the United States for the Northern District of Illinois.

[May 29, 1905.]

Mr. Justice Holmes:

I do not dissent from the judgment in this case because, if for no other reason, the difficulty which I have felt does not impress my brethren, and I suppose that I must be wrong. But I think it well to state it, were it only to show that it has not been overlooked. It is this: If I assume that the facts disclose an agency, as matter of law, in spite of a finding the other way, still I do not quite see how the laws of Illinois can make service on the agent a service on the principal. Jurisdiction for legislative as for judicial purposes depends on power over the persons or property to be affected. To bring a person within the jurisdiction of a Court the person must be physically there or must consent to be affected by the procedure, either by appearing or by appointing an agent authorized to receive service. I should have thought it not enough for a State to say, if you send an agent into my borders I shall treat him as representing you for purposes of service. I should have said you cannot create jurisdiction by a fiction of law. Sending the agent may be a wrong for which you can punish the agent, or the principal if he can be caught. But an agent is not an agent for service of process unless the principal makes him so. Sending the agent with express repudiation of the relation and of the consequences sought to be attached by the State cannot be said to import an actual assent to be represented by him in court, and I should have thought that nothing less than actual assent or physical presence would do. Still I understand the proposition that you cannot do an act and repudiate the legal consequences, and although it strains my conceptions of law to apply that doctrine to the very question whether the principal ever has brought himself within the power of the legislature to attach to the act done the consequence of legislative power over him, I do not go further in my own mind than to entertain a feeling of surprise.